MISSISSIPPI LAW JOURNAL

PROCEEDINGS
MISSISSIPPI STATE BAR

FIFTY-NINTH ANNUAL MEETING

October 1964

VOLUME XXXV NUMBER 5

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1964-65

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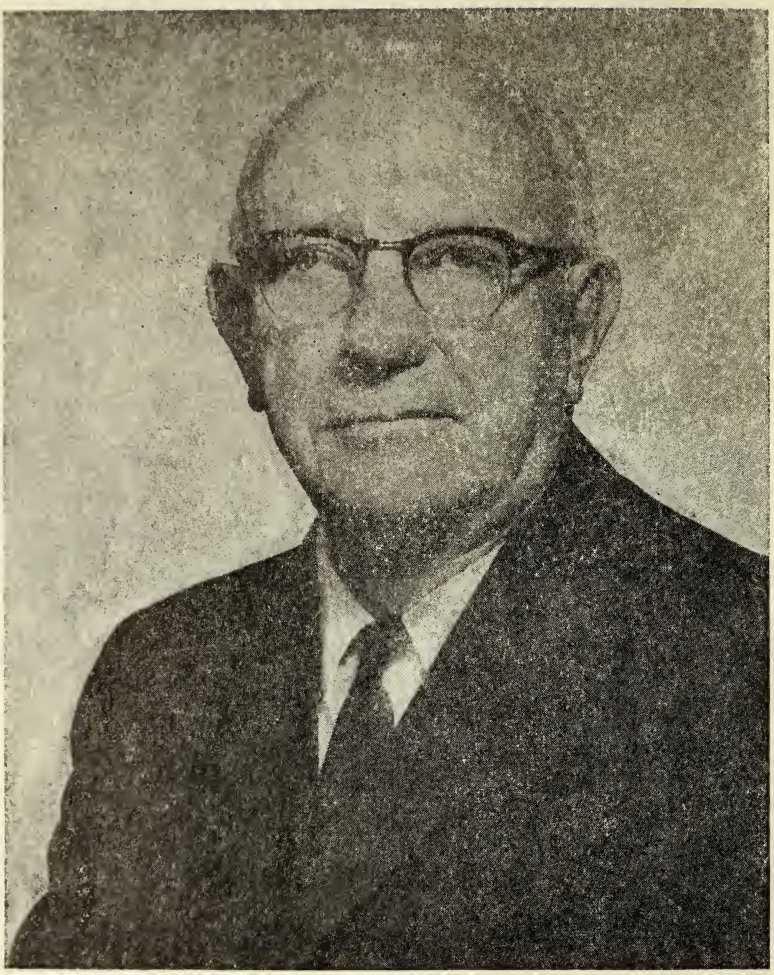

EDWARD J. CURRIE

Retiring President of Mississippi State Bar

PROCEEDINGS OF THE FIFTY-NINTH ANNUAL MEETING

OF THE

Mississippi State Bar

Held at Edgewater Park, Mississippi, on June 18-20, 1964

The First General Assembly was called to order in the Edgewater Gulf Hotel in Edgewater Park, Mississippi, at 9:00 a.m., June 19, 1964, by Mr. Edward J. Currie, President of the Mississippi State Bar.

The invocation was delivered by the Rev. John M. McKay, of Gulfport.

An address of welcome was delivered by Mr. David Cottrell, Jr., of Gulfport, and was responded to by Mr. Earl T. Thomas, of Jackson.

President Currie then delivered the following report.

REPORT OF THE PRESIDENT

Edward J. Currie

Those of you who were present when I was inducted into this office will recall that I promised you only three things. I did promise you that I would never usurp an authority which I didn't have; that I would never undertake to speak for the Mississippi State Bar unless I had been previously, expressly authorized to do so. I have committed a lot of sins, but so far as I know I have never exceeded the authority that a client gave me. I had several requests during my administration to do things that I knew I did not have the authority to do, and consequently, even though embarrassing sometimes, declined to do. Some other president might have done it but I just didn't do it because I knew I didn't have the authority to do what I was asked to do.

There was one statement that the late Edwin R. Holmes, when he was U. S. District Judge for the Southern District of Mississippi, made over at Vicksburg on one occasion. I was representing the government as U. S. Attorney. The government was undertaking to forfeit the car of a young lady about sixteen years of age for the reason that it allegedly had transported untax-paid whiskey. Uncle Sam is not opposed to whiskey but he wants you to pay taxes on it. Well, Judge Holmes asked me if, in my opinion, he had the authority to remit that forfeiture and I told him in my best judgment he did not have the authority to do it, that he did have the power to do it but not the authority. He said, "Well, now in my opinion the exercise of a power where no authority exists amounts to an embezzlement of

authority, and I am not going to do something that I have got the power to do unless I am convinced I have got the authority to do it." I have always tried to follow that advice and have always declined to do that which I was asked to do unless I thought I had not only the power but also the authority to do it. I think that would be a very, very good guide for every lawyer, young and old, and for every judge and every group of judges to follow. I don't think any court, whether composed of an individual or group of individuals, should ever do that which they have the power to do but which they have no authority to do.

I am a Scotchman by birth and if I had been given a choice I would still be a Scotchman. I may have been a little too Scotch in the administration of your affairs as President. I have been stingy in calling meetings of the Commissioners. We had three, the organizational meeting in July of last year, a subsequent meeting in September of last year, and then our final meeting—there may be another brief one during the day today—and then the meeting yesterday afternoon. I knew that every member of the Board of Commissioners was a busy man, an able lawyer, that they would have to travel, some of them, across the state to get to the Commissioners' meeting, regardless of where it was held, and I did not want to call them unless it was necessary. Then I did not want to spend your money having meetings even of the Commissioners unless I thought the circumstances justified it.

I may have gone to extremes in, not the number of committees that I appointed, but the number that I didn't appoint. I tried to hold the number of committees to a minimum. I am not criticizing the American Bar, because it is very ably administered, but during the past year I haven't had time to count all the committees of the American Bar. I don't believe there is anybody up there that could tell you all of them from memory. I did try to hold the number down in Mississippi, and I have held it down. We have had some very able committees that have functioned admirably. I am not going to try to enumerate all the things they have done, but I want to highly compliment some of the committees, not for what they have done, but what they didn't do. To give you a typical illustration, I had a report from Calvin Wells, Chairman of the Ethics Committee, and a very able chairman and a very able committee. The report said the Ethics Committee hadn't had any meetings, hadn't received any complaints, and had no report to make. To my mind that was a very fine report coming from the Ethics Committee, because if there had been much unethical going on, that committee would have heard about it and I think would have done something about it. In fact, they had nothing to report. It was the most pleasing report they could have made to me.

I have tried throughout my year's pleasant tenure as President of the State Bar to do those things which I thought needed to be done

but not to be pestering the individual members of the Bar nor any committee of the Bar, nor the Board of Commissioners, to do anything that I didn't think was necessary to be done, because I always remember the admonition, I believe it was of Thomas Jefferson, who said that "the people least governed are the people best governed." I am not criticizing anybody. I am simply expressing my opinion.

We say a great deal critically of our federal government. Criticism of our federal government has been going on ever since George Washington, the first President. It is still going on. Historians say that there have only been two Presidents of the United States of America who were not castigated by their critics and those two died so soon after they were inducted into office that the critics just simply did not have a chance to criticize them. All the rest of them have been criticized, so I want to throw in my two cents and say that in my opinion one of the biggest faults with our system of government, nationwide, statewide, local and every other way, is that we, the people—you—have delegated too much authority to our elected representatives and that, they in turn, have delegated too much authority to agencies and bureaus and committees, if you please. Oh, they say, "We have to do business in our national and state governmental bodies and local governmental bodies by commission. It's just too big a job to get it done otherwise." Personally, I think the country would be safer nationwide, statewide and locally if the men and women serving as our representatives appeared on the floor of the Senate and the House of Representatives in Washington and matched swords there with their adversaries and debated questions on the Senate floor and on the floor of the House of Representatives, with great orations as were sometimes heard in the past. We might avoid a lot of the misunderstandings that we have now. I am sure a great deal of federal legislation is passed which nobody in the Senate or the Congress has the least idea of what is in it. I am inclined to believe sometimes that actions get through our state legislature when all the members don't know what it is all about. We have some statutes on our books that I am quite sure a lot of very fine men and women didn't know what they were voting for when they got there. We have had too much rule by committee, in my opinion, and I have reserved unto this Convention the right to make your own decisions. Whatever action you want to take as a Convention, well and good, but I want to give you this warning, and invoke the same privilege that George Washington did, knowing full well you are going to do my farewell address just like you did his, and ignore it—but let me give you this word of warning: We people of America have not lost any of our liberties by miles or in large chunks. We have lost it inch by inch and foot by foot, until we have let it get out so far we can't call it back. It is terribly easy to make a mistake but terribly hard to correct one.

If you don't believe that, you just file a suggestion of error after the court has made a mistake and the odds are 98 to 2 against your getting that mistake corrected. It is that way with the authority that you delegate to somebody else. You will realize some day that you have made a mistake, but your mortality rate in getting it corrected will be just the same as that of suggestions of error—it will be 98 to 2 against you that you will never get that mistake corrected, because to whomever you have conferred that authority, he is not going to give it up willingly and it's going to be a hard job getting it back.

So you members of the Bar, don't surrender any of your power as a Convention, but keep it and exercise it if you want to. Don't confer it on the President or anybody else. And let me say here, you have this to be thankful for: the law expressly provides that a President of your State Bar cannot suceed himself, and I am, therefore, not a candidate for re-election. I am not sure whether I would be if I could. I have gotten so deeply in debt the past twelve months, devoting half my time to the Bar business, that I don't believe my creditors would agree for me to run for re-election even though I had the right to do so.

I want to enumerate a few of the things that occurred in my tenure. I haven't experienced any unpleasantness during this past year. One of the pleasant things that happened early in my administration was the opportunity that my wife and I had to attend the American Bar Convention in Chicago, and we did attend. We went up on the train, not because I was afraid to fly in a plane but I am Scotch and love to take anybody's bet when you give me odds of 25,000 to 1 that they will get me there safely and back. So I am not afraid to ride planes, but I wanted to ride the train just to see the countryside. I had never been to Chicago, and one of the things that I enjoyed immensely but which embarrassed me to some extent, was the view of the Illinois countryside. Most of the daylight hours that we traveled in going to Chicago were spent in Illinois, and when you look out the windows of that train on both sides just as far as you could see, there would be not only crops, but as fine crops as God Almighty and nature have made it possible for men and women to raise. I know, of course, that the people in Mississippi are, I wouldn't say the finest, but some of the finest people in the world, and there are none any better. I would not want to offend anybody that was not born and reared in Mississippi because there are good people all over the world, maybe more of them per capita in Mississippi, but there are good people everywhere. But I couldn't help wondering as I sat there and looked at those beautiful crops, so beautiful that you could just tell that the Lord and nature had co-operated with those people in producing them, "Why it is that so many of our people in Mississippi rent their lands to the government and don't cultivate it?" I imagine the people in Illinois up there are

under the same governmental regulations as those that apply to Mississippi, and why is it that we do not have all those beautiful crops? Oh, there are some raised in Mississippi, yes, but why not more? Too many of our people simply rent their land and get paid for not cultivating it. I don't believe God Almighty will prosper us too long in that kind of practice, and I didn't come here to preach you a sermon.

Another thing I want to comment on, too. I have never had any sectionalism in my heart and I have stated it publicly many, many times. We have six grandchildren, my wife and I. Three of them were not only born in Mississippi, but in the southern part of Mississippi, and not only born in Hattiesburg but in the southern part of Hattiesburg. Three of my grandchildren were born and up to the present have been reared there. The other three little Yankees were born in northern Ohio, and, brother, if anybody hurts any one of them they will have the "Old Man" to contend with. I have no sectionalism in my heart because fifty percent of my grandchildren are Yankees, the other fifty percent are Southerners and I defy anybody to touch a one of them, unless they want to contend with the "Old Man." And I am not going to ask them, "What section of the country did you invade in order to hurt one of the grandchildren?" I am just going to want to know, "Did you hurt one of them?" I had never been in Chicago before and I didn't know there was anything there except Sears-Roebuck and a few packing houses. Aline and I spent eight days there, and of all the stuff I had been reading in the newspapers and in the magazines and having people tell me about, Aline and I looked for, and we couldn't find them. I think the reason was that we stayed where decent people were supposed to stay. We didn't go looking for any trouble, and therefore, didn't find any. We enjoyed that eight days in Chicago and the people in Hattiesburg couldn't have been any nicer to us than were those people in Chicago. I want to say to you here and now that that is the kind of people that Aline and I have found all over America. We haven't been in every state in the Union, but I do say to you that in every state in the Union that we have been into we have received courteous, considerate attention, and I think just about all of our people do that who deserve that kind of treatment. There have been exceptions, yes, but during the last six or seven years I haven't run into one of them. I have always gotten the kind of treatment that I, deep down in my heart, felt like I deserved. Sometimes I didn't deserve courteous, kindly treatment and, therefore, didn't get it.

I just want to talk to you very briefly about the Continuing Legal Education Committee. Plans had been set up by Sidney Carlton's administration, and a very fine one, but they were delayed because of incidents that I do not need now to discuss, which take into partnership the University of Mississippi. You know some things have happened

that made it impossible for the University of Mississippi to do many things that it wanted to do during the past year, but that program is all set up and ready to go into operation just as soon as the new administration takes over. The contract is ready to be signed. It could have been signed yesterday, but I thought it would be more proper for the incoming administration to sign it than for my administration to create that obligation when we wouldn't be there to discharge it. One thing we have studiously done, your Commissioners and I, is not to leave any hangover obligations for the incoming administration. Earl Thomas and his crew are going in there with the slate clean insofar as any debts are concerned, or any obligations are concerned. And, incidentally, your books have been audited and I am not going to take time to read the audit to you, but it is on file with Mrs. Nevels and any of you who want to examine it have a perfect right to do so. But I am proud of that audit and pretty much gratified by it. It might be unwise for me to tell you about it and you might want to start spending money before Earl Thomas has a chance, but it shows us in good shape.

The membership of the Bar has increased some, as it should have, taking into consideration the normal increase. I don't dare to try to enumerate the activities of all the committees because I would inevitably leave out some of them and probably some of the most important work that has been done. I do want to say this, and as I said before, I haven't had any unpleasant experiences during the past year, but one of the most pleasant experiences that Aline and I had was the trip that we made to the University of Mississippi. Incidentally, we have been married forty-four and a half years and our last wedding anniversary, St. Patrick's Day, March 17th—I never have any difficulty remembering it because the Irish always remind me of it, including my wife—we spent in driving up to the University of Mississippi. I had been invited by virtue of my position as President of the Mississippi State Bar to make the principal address there in connection with their Law Day USA program. The only real scare and difficulty I had was when we drove up the Natchez Trace. It had a speed limit of fifty miles per hour, and I have never seen the time when I could slow Aline down to any fifty miles an hour, regardless of whether she was running the washing machine or an automobile machine—she just doesn't travel that slowly. I finally appealed to her on the basis that it would be terribly embarrassing to me, going up to the University of Mississippi to make a speech on the subject of "obey the law," to get arrested on the way up there. So I finally did get her slowed down so that she could slow down if the highway patrolman got after us.

But we got up to Ole Miss, and one of the oldest friends I have, John Fox, the old gray headed man, and his young wife, Marjorie, took us in tow as soon as we got to Oxford at five o'clock on the afternoon of

March 17. I don't believe any two people in the world could have been entertained any more royally than we were, and it was at the expense of the Foxes, too, and not the University—at least that's what John told me. But we were well housed, and we were well fed and entertained perfectly. Then the next morning at ten o'clock they had a meeting there of all the law faculty, all the law students of the Law School of Ole Miss and their invited guests, and I was given from ten until twelve to say whatever I wanted to say. Well, I took an hour to say it, and I want to say to you here and now that in forty-one years—I started trying to make speeches forty-one years ago, have been at it ever since and haven't stopped for a very long period—I have never made a speech anywhere on any subject, on any occasion where I had a more intelligent, a more appreciative audience. I don't know whether it is because the law faculty at Ole Miss and the Law School students at Ole Miss and their guests are the smartest people on earth or whether it was because they were the most patient or whether they were just trying to show deference and respect for an old man. However, I have never seen people who demonstrated their appreciation any more than they did for the effort that I had made to say to them what I thought might help a group of young law students. I think I got sort of in "Dutch" with the Board of Commissioners of the Mississippi State Bar when I attended a meeting while I was Vice President, before I assumed the office of President. I made this statement to that group of men, that I didn't think there was a thing in the world that I could do to help men of their age and station in life, because I said, "Each one of you thinks you have got it made, and I think you have. There is nothing I can do to help you, but I do hope there will be something during the year that I can do to help young lawyers or law students," and I could see that there would be an opportunity when I went to Ole Miss to try to say something to those young men that would help them in after life, and many of them made out like I had helped them. I know they were sincere and I hope they were correct in their conclusions. I want to say this: I don't care what you read in the newspapers or in the magazines or what anybody tells you—I don't even care what you make up your mind about and say to yourself—I say, without fear of successful contradiction that your Law School at the University of Mississippi is in good hands. They have an unexcelled student body there in my opinion, and I predict that out of that Law School in the future you will see the Mississippi State Bar continue to progress and grow. I don't mean to say that this is the only law school in the State—no, I am not saying that. So far as I know it's the only one state supported in Mississippi, and I want to say to you that I think that any lawyer in Mississippi, any citizen of Mississippi, who does or says anything to injure the Law School at the University of

Mississippi is making a direct threat at the welfare of the State of Mississippi and her future. It's up to you and me, I think, to do everything we can to help and nothing to hurt the Law School at the University of Mississippi. I don't care how mad we get or how scared we get, let's don't do anything or let anybody else do anything—I am talking about of course within the bounds of the law—to injure the Law School of the University of Mississippi. In my opinion it is one of the greatest assets that the State of Mississippi has or ever has had or ever will have, and let's keep it going, regardless of the cost in dollars and cents.

There are two people that I want to thank for their services rendered. Mrs. Alice Nevels, the Secretary-Treasurer, Executive Director of the Mississippi State Bar—I don't believe anybody can give you the remotest idea of the quantity or quality of the work that that lady does except those of you who have had the privilege and honor of serving as President of the Mississippi State Bar. Every working moment of her life, Mrs. Nevels literally lives for the Mississippi State Bar, and she does it in a most competent kind of way. I don't begin to recommend to any man in this audience to accept the responsibility of being President of the Mississippi State Bar unless you could have Mrs. Nevels or someone just like her to help you. I hear whispers and rumors once in a while that we ought to have a male Executive Director of the Bar. Personally, I had just as soon have a male wife—and I haven't got a bit of use for one of those. Oh, you have got the power and you have got the authority to do it, and if what you want is a male Executive Director, all right, get you one, but, brother, you will be sick at your stomach in less than twelve months if you do. That's my prediction and I'm willing to stand by it. It will be a miracle if you ever switch over to some other system and get you a male director. You'll be directed all right—you'll be directed, but you aren't going to like it, and you'd better take an old man's warning and stick with the women.

I want to give this warning to those of you with limitations upon your ability. I don't believe I could exist—I know I couldn't accomplish anything—with nothing but male assistants. I have to have somebody to help me that has not only the education and the intellect of a woman, but I need the help of somebody that has the intuition and that special something that no man in the world has. A woman can reach the proper decision and she won't say "per curiam affirmed," as the court may do when it has no reason upon which to base its decision; she may say "just because," but I have never found a better reason in my life and I have never challenged my wife's decisions when she said "just because." If I went ahead and did what I wanted to do in spite of her admonition and against her decision when she said, "I'm against it just because," I have always regretted it. If you haven't lived long enough to find that

out, you will some day. You had better listen to your wife if you have one. If you haven't, you ought to get busy and get you one. Not just anyone, but one that can help you.

The only other person that I want to mention specifically before I quit, and I don't think it is necessary, but if I hadn't had the help of my wife during the past year, if it hadn't been for my wife, I wouldn't be here in the first place, because I verily believe that it wasn't my friends who elected me to this great office—it was my wife's friends. And I hope that I haven't let them down.

Mr. Gibson B. Witherspoon, of Meridian, introduced Mr. Edward L. Wright, of Little Rock, Arkansas, Chairman of the House of Delegates of the American Bar Association, who delivered the following address.

A BIRD'S EYE VIEW OF THE AMERICAN BAR ASSOCIATION

Edward L. Wright

I am going to talk very briefly about an institution in which most of you have a strong proprietary interest, the American Bar Association. The American Bar Association, as a matter of history, is eighty-six years old. As a matter of personal interest to you, it is a voluntary group of 117,000 members, the largest voluntary professional group in the world. An interesting statistic is the fact that over one-half of the membership of the American Bar has come in the last ten years. We are the only voluntary association of lawyers which has the membership, the physical plant and the annual income that we produce.

The American Bar Association is in reality a trio: the Association, a voluntary group, the American Bar Foundation, a research non-profit corporation and the American Bar Endowment, a non-profit corporation. The three combine to produce one entity for the service of the American Bar. You are proprietors in a physical plant that cost more than $4,000,000.00 and is fully paid for; you are the employers of 156 full time employees in Chicago, Washington, New York and Oklahoma City. You are partners in an endeavor that has a combined annual income in excess of $4,000,000.00 and which receives annually grants in excess of $2,000,000.00. So if we want to talk about brick and mortar or numbers of members or dollars at our disposal, which we must use frugally to cover all of the needs, we are big business and we are all partners in it.

The American Bar Association has but one purpose, and that is to serve. The areas in which it serves are variegated with respect to their particular objectives. One serious note in the most delightful

remarks of your President this morning was that he had received help from your American Bar Association. So may every individual practitioner in America. A little known fact is that there are 292,000 plus licensed lawyers in the United States. By best account approximately 200,000 are engaged in the practice of law, either day to day in the pit, or in the office, full time law teachers, members of the judiciary or full time governmental employees at the local, state and federal level. There is no licensed lawyer who is not in position to profit tangibly and directly by the operation of the American Bar Association. It is at your disposal.

In the Bar Center in Chicago are seven affiliated organizations. One is the National Conference of Commissioners on Uniform State Laws, of which Gibson Witherspoon, Hugh Clayton, and Dean Morse are commissioners. They are an affiliated organization of the American Bar Association, the principal product of which I urgently and strenuously recommend for your adoption, the Uniform Commercial Code. My sister state of Arkansas to the west, your sister state of Tennessee to the north, have adopted the Uniform Commercial Code. I can personally testify as a country lawyer that it is the most monumental and finest legal work ever struck off by the brain of man at a given time. It is not perfect and it has one great vice. It requires lawyers to go to school and learn it all over. It requires the junking of present knowledge that was acquired on a basis of 1890 practices and techniques. The American Bar Association, like your association, operates in two basic areas for the practitioner where he may be helped economically and where he may be helped educationally.

I could not be in Mississippi without paying just tribute to John C. Satterfield, who, as you know, is a past President of the American Bar Association, but who in my memory will go down in another area as the greatest exponent of the dollar for the individual lawyer. John conceived, projected, and brought home the true national economic position of lawyers and set out to do something about it. Through his very distinguished and energetic efforts he has contributed a great deal to the elevation of the income of lawyers. Just as a court room ought to be something more than a cockpit in which lawyers may fight, so the practice of law ought to mean something to a lawyer besides the making of a living. But, Mr. President, I would want to practice law without making a living about as much as you would want that male wife, and John Satterfield has done more than any one lawyer in America, through the assistance of his conferees in the American Bar Association, toward elevation of the economic standards of the lawyer.

The American Bar Association has the largest group insurance program in the world. It is not in competition with the Mississippi State Bar Association or any other state association. Those of you in this

room who have not availed yourself of the group life insurance or the group disability insurance afforded by the American Bar Association are cheating yourselves most unwisely on a dollar basis. HR 10, giving a modicum of tax relief to the self-employed, is solely the product of the American Bar Association. It was highly diluted in the ten years of winnowing that it got at the hands of Congress and it is a very, very weak facsimile of the bill that was introduced, but it is at least a step in the right direction. It is heartening to observe that the American Bar Association Retirement Association, formed after the passage of HR 10, received more than a million and a half dollars from individual practitioners in the first nineteen days of its existence. Today the federal judiciary is on the threshold of an elevation in salaries much needed. After rejection earlier this year of a bill sponsored by the American Bar Association to increase the level of all federal judicial salaries $12,500.00 a year, the House of Representatives of Congress has passed a bill giving $7,500.00 a year increases.

The defense of the indigent bill which has passed is a product of the American Bar Association, and at the present time the Association is energetically engaged in doing something to fill a void that frightens everyone who thinks about it, that of presidential inability and succession. Since the tragedy that occurred in Dallas last November 22 we have been without a Vice President. In the case of the inability of the President to function, there is no person who has legal or de facto power to speak for the United States. This is a most frightening condition to contemplate, particularly in these days when nuclear destruction is but a matter of pushing a button. The American Bar Association was invited—it was not an interloper on the program—to come forth with a practical, non-partisan, disinterested recommendation for legislation and constitutional amendments to fill the void of inability and successison. As a result of that there has been introduced in the Senate Joint Resolution 139 proposing a constitutional amendment that would cover all aspects of presidential inability and succession. If this passes, as I predict ultimately it will, there will be an instance of monumental service rendered by your Association.

And so we could enumerate: the improvement of the traffic court program, which spends approximately half a million dollars through grants of various companies interested in highway safety, the model judicial programs, the improvement of standards of bar associations, and the like. These and many others are services rendered by your Association.

It has been a pleasure for me to be here today.

Mr. Webb Overstreet, of Jackson, presented a report on the Mississippi Bar Foundation.

The afternoon session was devoted to the topic, Personal Injury Litigation. Mr. Lester F. Williamson, of Meridian, introduced Mr. Francis H. Hare, of Birmingham, Alabama, who delivered the following address.

THE PHILOSOPHY OF THE PLAINTIFF AND HIS LAWYER

Francis H. Hare

I am not going to say anything learned, nor will I say anything that I presume to be new or wise. I am going to try to give you an insight into the point of view of those lawyers who have devoted their lives principally to representing plaintiffs. In approaching that subject, gentlemen, I want to do it with some caution. There is no such thing as a womanless wedding, and there is no such thing as a lawsuit without a plaintiff and a plaintiff's lawyer and a defendant and a defendant's lawyer. They are all necessary, and I would be the last man to suggest that there should be a clique of plaintiff's lawyers and another clique of defendant's lawyers. That sort of thinking can divide and destroy the bar. There has been a trend or a tendency of our clients, both for the defendant's lawyer and the plaintiff's lawyer, to downgrade the lawyer on the other side. They say, "Oh, that NACCA —that's a bunch of radical fellows," or "There are those cold blooded, striped pants fellows that represent the defendant—they've got no heart." I am a plaintiff's lawyer for the particular reason that when I got out of school no corporation firm would have me. That's why. So I don't think a man is lost or damned because he represents the defendant, although I think he's got a little of the rough side of the thing. I think that the oath to represent the defenseless and oppressed is surely coming a little closer to describing the poor, embattled fellow who represents plaintiffs than the man whose prestige and fortunes are secure on the other side of the table, but I love them and respect them and I don't want anything I say to be taken as suggesting that because they are forming plaintiff lawyers' associations and defendant lawyers' associations that we should for a minute forget that we are all lawyers. If we be trial lawyers, all right, we are trial lawyers, but the philosophy for both sides at the outset should be to see truth discovered and justice done.

There is without any question in this country in the past twenty years a marked tendency for juries to award and courts to uphold increasingly larger verdicts for death and personal injuries, many times larger than were sustained or upheld a generation ago. That is true. Now the question to which I address myself is this: Is that a good thing or a bad thing? Is that a just and right reform in the law? Or is that something to be viewed with alarm? Is that, as some of the

liability insurance companies are bound to argue, something that threatens the security of industry and that raises insurance premiums to where ordinary people can't carry it? Or is it a right and just thing? Now that, generally, gentlemen, is the thing assigned to me to discuss. I am going to be an advocate in discussing it, but I am going to try to be honest in discussing it.

Now these are the four things that I intend to say about it:

First, the mere fact that the verdicts are larger does not condemn them as unjust. The mere size of these verdicts—$50,000.00, $100,000.00, $250,000.00, $500,000.00, and some greater—does not of itself condemn them as contrary to the administration of justice or bad for the body politic or an unendurable burden upon commerce. The size alone is not enough to condemn them. The second proposition is that there is no substantial increase in malingerers and frauds, nor is there much danger of fraud. That is in response to a series of articles and television plays motivating a recent article in the *Reader's Digest* that said that there is a fraud tainting ninety percent of the cases involving injuries to the cervical spine, which they like to label "whiplashes," as if that made them any more comfortable. The third proposition is that it is just as noble and dedicated a calling for a lawyer habitually and usually to represent the plaintiff as it is to take the other side, and vice versa. And last, the principal thing that I want to do is to contrast a tort case as it is treated by the law with a contract obligation as it is treated by the law. I want you to consider whether I am correct in suggesting, not that the plaintiffs are getting too much, but that they are probably getting too little. Generally speaking, although there are exceptions, the law treats tort claims as a step child and the public should not be prejudiced against the administration of law. Now what do I mean by that?

There are among you those who will remember when the prohibition law existed and you could put a man in jail for five years for having five gallons of whiskey. That law was not enforced because people didn't believe in it and didn't sympathize with it. Juries do what they want to do. The judge can charge them till he's blue in the face, but a jury does what they want to do, and if they think there is a menace, a danger, a rising tide in excessive verdicts and that the court rooms are full of crooks and frauds that are trying to get something for nothing and that the plaintiff's lawyers are bringing in sage brush witnesses and all that sort of business, and if they view this case askance when it starts off, then honest and just claimants are not going to get that law administered any more than juries would convict a fellow in the old days when he had five gallons of corn whiskey.

Now I am going to start with these points and I am going to try

to stay within the time allotted to me. The first one is that the mere amount doesn't make it bad, and I am going to compare that with the medical profession. We are always being compared unfavorably with the medical profession and I have two or three figures that I would like for you to see. Fifty years ago a man with pneumonia was put to the expense of $150.00. Today he is put to the expense of $750.00. Is that bad? Fifty years ago one man out of five died with pneumonia. Today one man out of a hundred dies. Does anybody begrudge the increased cost of treating pneumonia?

The nation's bill for medicine today is thirty-five billion dollars. Fifty years ago prescriptions averaged eighty-five cents. They now average $2.62. Fifty years ago prescriptions in the aggregate cost $140,000,000.00. Now they cost $1,466,000,000.00, but they have added ten years or more to the life of the average person.

So here are the two professions. A man has one son who studies law and another son who studies medicine, and everybody praises the sainted gentleman who practices medicine and doesn't begrudge the thirty-five billion dollars a year spent on medicine because they keep you alive and save you from pain. Incidentally, the average earning of the doctor in this country is $25,000.00 a year and the average earning of the practicing lawyer, according to the Bar Association Journal, is five or six thousand dollars. So I just say that the increased cost of a thing does not necessarily condemn it.

Now let's come to the second point of whether there is much or little fraud.

It was alleged that ninety percent of the cases are tainted with fraud. Well, the recipe for rabbit stew is to first get your rabbit. You have first got to get ninety percent of the people crooked. I don't believe ninety percent of the men in this audience listening to me are dishonest. I think if an automobile hits you, it may break your bones, but I don't think it shatters your ethical standards and turns an honest man into a fellow trying to get something for nothing, who is willing to put his hand up in the air or lay it on the Bible and swear to tell the truth, and swear that he has got something wrong with him that he hasn't. So I say at the outset, the preliminary assumption is wrong. Ninety percent of the people of this country are not crooks. All right, then does the good Lord in his mercy send accidents as a punishment upon burglars? Or do they happen to good old innocent ladies on the way home from church? Do they happen to innocent children? They happen to the just and the unjust alike. So I pass beyond the statement, which I deny and reject indignantly, that ninety percent of the plaintiffs have got some larceny in their hearts, because I have got more faith in human nature than to believe that assumption.

But alternatively, let's say that they would do it if they could—they

would exaggerate or malinger if they could. I say to you that if a man was about to build a house, and he lived right by unlimited goods and forests, and could get all the timber that he needed, he wouldn't build his house out of pasteboard. Automobile accidents in this country kill 50,000 people a year and they injure a million to two million people. Why then should a lawyer risk his reputation and waste his time to get one-third or one-half or nothing, representing some fellow with a railroad back or whiplash injury that he is exaggerating. He has got all the honest cases that he can possibly try. Why would a man try to sell muddy water if he's got all the bourbon he wants to sell? Why would a man risk disbarment and disgrace and get nothing, if he hasn't got any reputation or integrity, trying to fool just as smart a lawyer on the other side, when he can draw from fifty million fatalities and a million serious injury cases available to him? What happens to all the honest people that get hit by automobiles?

But let us assume that you find both a dishonest client and a crooked lawyer. There has to be a doctor to testify in that case, a crooked doctor to support him, and third the doctor on the other side who is trying to catch him. With all this science, I say that the assumption that there are enough "punks" in this country to outwit two learned professions and make malingerers a serious threat to the administration of justice is simply absurd. I leave that subject and go on to the next one.

I have said that it is just as noble to undertake the representation of a plaintiff as it is to represent a defendant. I recall our oath. We swore that we would represent the defenseless and oppressed. I have seen lawyers live and die; I have seen good lawyers and I have seen bad lawyers, and I have stood by when eulogies were pronounced at the annual meeting of the bar. I never yet have seen a lawyer that I didn't think was loyal to his client, and I say give me the man who, instead of having the security and the prestige that goes with the other side of the table, has taken for his career to represent men, poor men, injured men, and give them honest and able representation. The plaintiff's lawyer has a non-repeat business—a man never gets killed but once and he can't get his leg cut off but twice. I think it is an unselfish and dedicated way in which a man can serve humanity.

Now, finally, the plaintiff's side of the table is not unduly favored in the law. Well, now where do I get the idea that it does unduly favor it? Who said it is? Just about every medium of publicity that is in the possession of those necessary industries and insurance companies, without which we wouldn't have anybody to sue. They have to defend themselves somehow, so they say sympathy is an ugly word. The great Erskine said two hundred years ago, "Sympathy is the mother of justice." It may not be "justice," but it's the "mother of justice." I don't want a case where the verdict and the amount depends on sympathy. Neither

do I want a case in which the members of the jury are so afraid of sympathy that they view an injured man with indifference. There is only one way in the world that I can look at a man with a leg cut off and give him an adequate sum of money, and that is to say, "There but for the grace of God goes Francis Hare with his leg cut off." Men are made so that the only way they can feel and evaluate the injury to another fellow is to say, "Suppose it was me." I talked to a man today who said the judge set a verdict aside on him because he had argued to the jury, "Do unto others as you would have them do unto you." Well, they didn't set aside what the Lord did with that statement. That is the basis for Christianity and civilization and I can't understand that court's attitude.

The insurance companies want jurors to start out on a bias against the plaintiff on the assumption that all he's counting on is sympathy and emotion. But consider what happens. The one million people that have been injured or the representatives of the fifty thousand people that have been killed come to attorneys. Those cases are screened. The plaintiff's lawyer doesn't accept the case unless in his judgment it possesses merit, so that a man of integrity and standing in the community can afford to identify himself with it, or a purely selfish man can hope to make some money trying the case on a contingent basis. I know that every lawyer does the same thing that I do—I look the person in the face and I say, "Are you really hurt?" Second, "Is the defendant solvent?"—no use getting a paper judgment. And third, "Have you got a fair case of liability?" If those elements are not met, you simply don't take the case, and therefore, the assumption that the defendant ought to win about half the cases is not well-founded. If a hundred cases are tried, it may be argued that the defendant should win fifty and the plaintiff should win fifty. But the plaintiff ought to win ninety-five of them. The fifty, or the other forty-five that the defendant ought to win just never were brought because the plaintiff's lawyer just didn't accept them and bring them to court.

The last thing I want to do is to contrast a tort claim and a contract debt. Here is a man that runs a furniture store and on a given day he has two transactions. One of them is the sale of a room full of furniture to a man who signs one of those papers agreeing to pay the lawyer's fee, interest, etc. and then takes the furniture. Well, the man doesn't pay for it and the store owner has to sue to get his money. That is the contract case that we will analyze in a minute. That afternoon the store owner delivers the furniture on a truck and the truck runs over John Smith and breaks his leg, and John Smith gets a tort lawyer and brings an action. Now we have two cases going to court, one in contract to recover the price of that furniture, and the other in tort for the man to recover for his leg. Which one of them gets the

nearer thing to a fair deal in the courthouse when you break it down? In the first place, a contract claim is a debt. It is protected by the Constitution in that no state can impair the obligation of contracts. Anybody that wants to can pass anything impairing the obligation of a tort obligation. Yet which of those two claims stands upon a higher plateau of moral obligation, the action to collect for the load of furniture sold at a profit or the action brought by the man who unwillingly had his leg broken or his back broken? The plaintiff is even denied the right to call it a "debt." It's a "claim."

What is the next thing? When the store-owner gets a judgment—and he'll get it every time because the purchaser signed that piece of paper—the plaintiff gets interest on it. I tried a case a year ago for a man with his back broken and the trial judge directed a verdict for the defendant. Then I made a motion for a new trial and he gave me a new trial. The defendant has appealed that case to the Supreme Court of Alabama, and it will take a year and a half or two years before I get another trial. Why? Because the defendant isn't paying any interest and isn't going to pay any interest until I get a judgment two years from now, which will be four years from the date of the accident. The plaintiff, if he is borrowing money to pay his doctors and to support his family, is paying six percent interest. The element of interest, gentlemen, is a very important one. I don't need to dwell on that to these people here that are buying tax free bonds. Bankers and everybody else know that interest is the difference between the world going around in commerce and not going around. Yet, the man who sold a load of furniture at twice what it cost him gets six percent interest, and the man who didn't want to sell his leg and had to sell it gets no interest until he gets a judgment. That is a discrimination and something the public ought to think about when they advisedly say that the fellow representing the plaintiff is trying to get something for nothing.

All right, what are some of the other elements? When the man sells a load of furniture he has all the proof he needs written down on a piece of paper and signed by the defendant. Have you ever heard of a claims adjustor giving the plaintiff at the scene of an accident a signed statement admitting liability? They will *take* a statement from you, if they can, but I never heard of them giving you one in which they admit liability. You have to go to court and contend with contributory negligence, or witnesses that said you ran the red light instead of him. You have a man with his leg cut off who has to get down on his stump and shoot craps in the courthouse, all or nothing—and maybe get nothing.

All right, suppose the man loses his suit for the load of furniture. What is he out? About half of it. So he sells another load of furniture and gets his money back. Am I going to sell another leg to get my

money back? If you lose, you lose, and that's the end of the matter.

Now let's say everything works fine. I get a judgment; a good judgment. Now if the man with the contract case wins he's got a profit, he's got interest, and he goes home and buys a new Cadillac. If the tort-plaintiff wins, the best he can do is break even because the law says just fair compensation. Break even, less what? From a third to a half—to pay his lawyer. And so the best he can hope for is to get about half of what is coming to him, if everything comes his way.

Now, gentlemen, that is a country lawyer's attempt to break down this thing that we call a tort obligation, and contrast it with this beautiful, revered, sanctified thing we call a contract debt. I ask you to give it your sympathetic and tolerant consideration the next time you think it's an easy way to get something for nothing.

Mr. Earl T. Thomas, of Jackson, then introduced Mr. Richard W. Galiher, of Washington, D.C., who delivered the following address.

THE DEFENDANT AND HIS LAWYER

Richard W. Galiher

Perhaps my talk should have been labeled "Litigants and Their Lawyers" because some of the things I desire to say are important to all lawyers in the personal injury field, plaintiffs' lawyers as well as defendants.

The system of American jurisprudence requires an adversary proceeding. If the day ever comes, and plaintiffs' lawyers are pushing hard in this direction, that comparative negligence, warranties without privity, liability without fault, and the broadening of the doctrine of res ipsa loquitur, prevent the defendant from winning a fair share of his cases, then the American jury trial is on its way out, and not only the defendant's trial lawyer but the plaintiff's lawyer as well. Is there anything unfair about a rule of law which requires a plaintiff to prove his case by a fair preponderance of the evidence? Has the plaintiff's lawyer reached a point where he needs to eliminate our time honored jurisprudence which has worked so well for centuries? On the contrary, he is constantly going on to still greater triumphs in his tremendous verdicts under the system which pertains. And yet the plaintiff's personal injury specialist continues to work in the legislature and in the courts to eliminate the time honored traditions and to seal our doom. He is playing into the hands of those persons who are preaching the elimination of jury trials.

Court congestion, widely blamed on automobile accidents, is causing increasing pressure for court reform, in the form of discarding jury trials. While court congestion does not exist in a large number of

localities, this is not apparent to the public in most jurisdictions. It takes approximately five and one-half years in Chicago to reach trial in a personal injury case, four years in New York, three years in Boston, over two and one-half years in Detroit, twelve months to two years in St. Louis, and in Los Angeles, El Paso and Worcester, Massachusetts, a similar traffic jam exists. Many suggestions have been made for court reforms such as compulsory pre-trial meetings, and separation of the trial of the issues of liability and damages, but now we are confronted with two movements which will hit the lawyer in his pocketbook.

Let me say first, parenthetically, that there is not a lawyer here who is not interested in working for improvement in the administration of justice, for the purpose of enhancing the service of the legal profession to the public, for the improvement of the adversary system of jurisprudence, and for the prompt, fair, and just disposition of tort claims by the elimination of court congestion and delays in civil litigation.

The two movements which have started in California and in New York are first, investigation of the possibility of installing a compensation system to handle automobile accident claims, and secondly, the elimination of jury trials in personal injury cases. Governor Brown of California, in 1959, initiated an investigation looking to the possible elimination by legislation of jury trials in traffic accident cases, and the substitution of a system of compensation for all victims of such accidents, regardless of negligence considerations, the awards to be made by boards or commissions. While the lawyers in California are continuing to fight this proposal, there is no way of knowing what will come of the investigation unless it can be demonstrated that the problem of court congestion can be solved.

In the State of New York, Judge Charles Desmond of the highest court of that state, has been advocating both in that state and elsewhere the abolition of the civil jury system in favor of non-jury trials. He addressed my Circuit Judicial Conference in Washington, D.C., in May, and I am afraid converted some of the District of Columbia lawyers to his cause. According to Judge Desmond, the United States is the only major country where civil juries are now used. During the last ten years, fifty additional judges have been provided in the State of New York, but that state is still losing ground. Ten years ago, he states, New York had roughly 50,000 tort cases in the state-wide supreme courts, while today there are nearly 700,000. Ten years ago, it took twenty-one months to reach a case for trial in the most congested areas, while today the average is thirty-four months.

Judge Desmond and another New York jurist, Judge Botein, have stated that the personal injury specialists on both sides of the table are satisfied with the present situation, that the trial bar is a closed

corporation and that the trial lawyers would like to keep the situation as it presently exists. Judge Desmond conceded that a great deal had been said in opposition to his proposal but that no one had come up with a solution which will solve the problem of court congestion in his state. He stated, further, that he did not seek instant abolition of jury trials but wanted an objective, unemotional study of the question in all its aspects by a competent body, and then a thorough airing of the whole matter at the bar of public opinion.

In the 1920's the District of Columbia adopted a Workmen's Compensation system administered by a U.S. Commissioner to adjudicate all claims involving injured workmen. Previous to that time common law actions had been filed against employers. Within a short span, it was well nigh impossible for an injured employee to get a lawyer to represent him in his claim against his employer because most fees were limited to approximately $50.00. The lawyer representing the employer or the insurance company was expected to defend the claim for about the same sum of money. A profitable source of legal business thus dried up and has never been replaced or replenished.

I am very much afraid that unless the lawyers in New York can come up with a solution to the problem of court congestion, they may find themselves with a procedure adopted which will eliminate jury trials in personal injury litigation. Why have I brought up this situation in New York and the one in California? All roads lead to Rome and we have seen New York and California in the forefront many times, in connection with judicial legislation and in the changing of civil procedures.

I have heard several insurance company executives state that they would be willing to try the compensation system, particularly in view of the fact that the plaintiff's lawyers continue in their efforts to obtain larger than adequate verdicts, to eliminate contributory negligence, to bring about the adoption of comparative negligence (which you have here in your state) and to bring about liability without fault. I am not authorized to speak for the insurance industry but it is comments such as these that have made me very apprehensive when we stop and consider that the vast majority of civil jury cases are those involving personal injuries.

It is not difficult to visualize what will happen to the legal business of all of us should the compensation system be installed.

One of the arguments used in support of the demand for abolition of jury trials is that it will be a time saver. While there is some argument to the contrary, it is my opinion that the average jury trial takes twice to three times as long as a non-jury personal injury case. The judge will not stand for the spectacular production that I have sometimes seen put on by plaintiff's counsel in a jury trial.

I have no specific plan for the problem because in most jurisdictions there are purely local reasons for the congestion, the first one of which is always the frequency of automobile accidents. I urge that the lawyers in those communities where the problem of court congestion exists devise a method suitable for their area, and it can be done.

I do not wish to sit by and see new procedures adopted which will deprive a litigant, be he a plaintiff or a defendant, of the right to his cherished jury trial.

The defendant insurance company and its lawyer are interested first of all, in cooperating with the state in programs which will reduce substantially the frequency and severity of accidents. Secondly, they are interested in the prompt and equitable settlement of claims of clear liability and their record establishes this position. Thirdly, they believe that necessary action should be taken to eliminate improper or unethical conduct on the part of doctors and lawyers in personal injury claims. Finally, they are interested in the adoption of procedures which will cut down the time of litigation by the use of pretrial settlement conferences, by the use of impartial medical experts, and by the streamlining of the jury trial wherever possible.

It has been asserted by the plaintiff's bar that there is a myth or fable which is being used against plaintiffs to the effect that juries, judges, and the public so sympathize with the plaintiffs, and are so prejudiced against corporate defendants, that plaintiffs get more than they deserve and that it is necessary for conservative citizens to stand firm against the rising menace of increasingly larger verdicts. It is alleged, further, that the myth is based partly upon mistake and partly upon deliberate propaganda aimed at the minds of those who make and enforce the law, for the purpose of retaining the unfair advantage being held by those who are usually cast in the role of defendants in tort cases. Let's look at the record.

Jury Verdicts Research, Inc. states that the overall average of verdicts in suits against local transit companies was approximately 8% higher than the average of awards in comparable suits against other types of defendants. This same organization made a comparison of verdicts rendered against trucking companies, with verdicts rendered against individuals, when similar injuries with comparable special damages were involved. The average of seventy-seven verdicts analyzed was ten per cent higher than the average of awards in suits against individuals which involved similar injuries and specials claimed. It is completely without basis to contend that juries, judges, and the public are not so sympathetic to an injured plaintiff that their emotions will not sway them somewhat for that plaintiff. It is the natural reaction of everyone, including a defense lawyer, to be sympathetic to any honest

person who has been injured in an accident, regardless of whether liability exists or not.

And if there is any question about larger verdicts, one has but to look at the NACCA Newsletter for June 1964, where he will see a record of three awards in death actions totaling $924,396.00, $600,000.00 and $150,000.00, as well as awards in injury actions in amounts of $290,000.00 and $225,000.00, all against corporate defendants.

Mr. Hare has stated, previously, that defendants are good citizens and that their prosperity is necessary to the general welfare. But he contends that it is not necessary to subsidize them by minimizing the rights of those who are killed and injured, any more than it is necessary to subsidize them by waiving the payment of their other debts which may take the form of payrolls or accounts payable, or taxes. With these statements, the defendant and his lawyer agree. The defendant's lawyer and his clients are anxious to settle all meritorious claims on a fair, prompt basis. The defendant is not, however, willing to pay fake or exaggerated claims, or to pay more than is fair and reasonable.

There is probably no lawyer here today, whether he has represented a plaintiff or a defendant, who has not seen a padded or fraudulent claim. Almost half of the public feels that the practice of submitting padded or fraudulent insurance claims is widespread in the United States, according to a national public opinion survey. Twenty-five percent of these same people believe that this occurs because of the relatively low standard of public morality. The remainder (21%) express reasons for padding claims as reflecting antipathy for insurance companies (the rates are too high, the company owes it to them, claims must be inflated in order to collect the justified amount, companies can afford to pay, etc.).

There is, unfortunately, an attitude on the part of some persons who seem to believe that the virtue of justice and honesty does not have to be observed when there is an opportunity of getting some money through a claim or a lawsuit from some injuries supposedly done to themselves. It is estimated that chiseling on automobile insurance, both by criminal rings and by individuals who pad and exaggerate claims, has siphoned an estimated $350,000,000.00 a year from insurance companies.

Within the past eighteen months, newspapers in such major cities as Baltimore, Miami, Los Angeles, Jacksonville and New York, have published articles exploring the reasons for automobile insurance rate increases. Doctors accused of teaming up with plaintiff's lawyers were discussed, ambulance chasing was covered, phony accidents were described. The Florida newspaper commented on one doctor who had treated three hundred "whiplash" cases at a rate which was estimated to have earned him over a million dollars.

Incidentally, it has been estimated that over 30% of all personal injury claims involve the so-called "whiplash" injury, and that in some areas as much money is paid out for "whiplash" claims as was ten years ago paid out for all types of personal injury claims. The father of the term "whiplash," Doctor Harold E. Crowe of Los Angeles, stated in 1958, to a section of the American Bar Association, that, "I have regretted this coinage ever since because the coinage proved to be counterfeit."

All of these articles put the legal profession, and more particularly plaintiff's lawyers, in a very unfavorable position. While it is true that the reputable lawyer has his hands full dealing with cases of death and genuine injuries, there is unfortunately another type of lawyer who is not as busy, who is not as reputable, and who will stoop to exaggerate a claim. It is no figment of someone's imagination that there are plaintiffs who are exaggerating their injuries, and unfortunately, many times lawyers are responsible for the exaggeration.

I do not know what the situation is in Mississippi, but an outstanding plaintiff's lawyer in the District of Columbia told me a short time ago that he was extremely upset by the amount of ad damnum set forth in the average law suit filed in Washington. It is now commonplace to file suit for hundreds of thousands of dollars in an action which will ultimately be transferred to a lower court because it is believed that the case will not bring a verdict of at least $10,000.00.

Any lawyer who has handled tort claims knows that it is very rare in a personal injury case that a plaintiff does not come off with a fair settlement. As a matter of fact, it is estimated that the "injury industry" receives a cool four billion dollars annually from liability suits arising out of injuries. This industry is represented by the injured claimant's lobby which is active in legislation in every state in its efforts to eliminate contributory negligence, to establish liability without fault, and in every way to make it easier for the plaintiff to recover.

Justice Oliver Wendell Holmes, Jr., in *The Common Law* said, "the business of the law of torts is to fix the dividing lines between those cases in which a man is liable for harm which he has done and those in which he is not."[1] The evangelists of today desire to change this position, this well-founded structure of the law which Holmes described as binding in moral phraseology. Is it because this approaches the Marxist theory of "from each according to his ability, to each according to his need"?

It has been suggested in some plaintiff's circles that interest should be added on all judgments recovered in personal injury cases. If a six percent surcharge interest were to be added to the cost of all judgments

[1]Holmes, The Common Law 79 (1881).

in personal injury cases, the dollars to pay that surcharge could only come from one possible source, out of the pockets of the insurance-buying public. If the cost of settling claims goes up, so must the cost of insurance. *Delay in The Court* by Zeisel, Kalven and Buchoiz of the University of Chicago Law School, insists that imposition of interest would affect the price of settlement of claims but would not increase the frequency of settlement.[2] And remember that the running of interest would provide tax free dollars for the litigant. Is he entitled to make a profit on his claim, or is he only entitled to adequate payment for the value of his injuries?

Let me ask you a question. Is the man who is advocating that interest be paid on personal injury claims from the date of the accident, or the date of filing suit, willing to permit a deduction from his claim for lost wages, the amount which would cover the income tax on said wages? Of course, he is not. Is he willing to have his claim reduced by virtue of medical payments coverage available to him on the defendant's policy, or is he willing to reduce his damage claim by the amount of salary and compensation which his employer has continued to pay him while he was disabled by the accident? The answer is still "NO."

And, when we speak of interest on judgments, is the plaintiffs' bar willing to recognize the fact that, if a plaintiff brings a law suit which is completely without merit and fails to recover, the defendant should be compensated not only for his legitimate court costs, but for his counsel fees which will cover the cost of defending an unmeritorious law suit? Should not a plaintiff be required (just as is the non-resident plaintiff to furnish security for court costs) to furnish security covering counsel fees, in the event he fails to recover? It will be suggested that this will prevent a poor person from having his law suit tried. Our courts and our legislatures have always taken care of indigent litigants, and they will not be deprived of their day in court upon a proper showing. In this day and age, however, I believe that most of the plaintiffs can pay, not only court costs, but reasonable counsel fees.

One outstanding plaintiff's lawyer has stated that the plaintiff ought to win most of the litigated cases, at least in some amount. This is probably true because the plaintiff really is the one who can pick and choose the cases he desires to try. However, the statistics show that over 50% of the jury verdicts of personal injury cases result in verdicts for the defense. This indicates to me that plaintiffs' lawyers are starting cases into suit that never should have been accepted in the first place. And one should not overlook the fact that not more than ten percent of litigated claims are tried. This means that most of the claims are

[2]See Zeisel, Kalven & Buchoiz, *Delay in the Court*, 15 RECORD OF THE ASS'N OF THE BAR OF THE CITY OF N.Y. 104 (1960).

settled by insurance companies on a basis which is considered fair and reasonable by plaintiffs' attorneys. In considering the cost of insurance these days you must not only look at the large verdicts, but at the fact that the companies are settling 90% of the claims, many on substantial bases, and it is not only jury verdicts but money paid out in claims which have caused your insurance rates, and mine, to rise.

The percentage of defendant victories in litigated cases becomes more surprising when one considers that a defendant's lawyer is now required to defend homeowners who are expected to foresee that children will break into liquor cellars and get sick;[3] a golf course which should post guards to keep small boys from wandering on and getting hit by balls;[4] storekeepers who should visualize that kiddies riding on their Dad's shoulders may stick their heads into ventilating fans;[5] railroads who must take precautions lest a sudden movement of a string of box cars impair the future earning capacity of some trespasser who might be sitting under the wheels eating his lunch;[6] and laboratories manufacturing vaccines who face the sobering prospect that any user of the vaccine who subsequently contracts the disease may recover without a showing that the disease resulted from any failure on the part of the laboratory to exercise due care.[7]

The defense lawyer is confronted more and more with an attempt on the part of the plaintiff to present to the jury his own measurement for pain and suffering in dollars on a unit of time basis. As a matter of fact, you have a case in Mississippi, *4-County Electric Power Ass'n v. Clardy*,[8] involving the use of a chart which contained a reference to the value of pain on a daily rate. This topic is one of the most controversial subjects in the field of personal injuries. It is probable that the first discussion on the subject was made at your 46th Annual Meeting in 1951, when a visiting lawyer in discussing demonstrative evidence stated he was going to show how to break down pain and suffering into dollars and cents, and put the figures on the blackboard for the jury. His authority was *Wright & Son Truck Line v. Chandler*,[9] a Texas case. As a matter of fact, the law there was established by the Texas Supreme Court in 1932 in *West Texas Utilities Co. v. Renner*,[10] and the *Wright* case was an intermediate court of appeals case. The earlier *West Texas Utilities* case has never been overruled. I would like to think that when the ques-

[3]HUNT, *Damage Suits: A Primrose Path to Immorality*, HARPER'S MAGAZINE 67, 69 (Jan. 1957).

[4]*Id.* at 68.

[5]Anderson v. Cooper, 214 Ga. 164, 104 S.E.2d 90 (1958).

[6]HUNT, *supra* note 3, at 68.

[7]Gottsdanker v. Cutter Labs., 182 Cal. App. 2d 602, 6 Cal. Rptr. 320 (1960).

[8]221 Miss. 403, 73 So. 2d 144 (1954).

[9]231 S.W.2d 786 (Tex. Civ. App. 1950).

[10]53 S.W.2d 451 (Tex. 1932).

tion is again properly brought before your court, it will follow the majority of decisions in the United States and the reasoning enunciated in *AFFETT v. Milwaukee & Surburban Transp. Corp.*, a Wisconsin case, where the court stated:

> The absurdity of a mathematical formula is demonstrated by applying it to its logical conclusion. If a day may be used as a unit of time in measuring pain and suffering, there is no logical reason why an hour or a minute or a second could not be used, or perhaps even a heart-beat, since we live from heart-beat to heart-beat. If one cent were used for each second of pain, this would amount to $3.60 per hour, to $86.40 for a 24-hour day, and to $31,536.00 per year. The absurdity of such a result must be apparent.[11]

The funny part of it is that the Supreme Court of Wisconsin got its decimal in the wrong place, and instead of a penny a second amounting to $3.60 an hour, it amounts to $36.00 per hour and for a year, instead of amounting to $31,536.00, it amounts to $315,360.00. So if the figure of $31,536.00 for pain and suffering for a year demonstrates the absurdity of such an argument, what about the figure of $315,360.00?

The plaintiff's bar does not lose an opportunity to pan or criticize the insurance industry. It is accused of unleashing "broadsides" to prejudiced jury thinking, to destroy the image of the plaintiff's lawyer before the public and to cast suspicion on the accident victim. As I have said before, I do not speak for the insurance industry although I am interested in its survival. It does seem to me, however, that the industry is completely justified in an honest and fair presentment of its case to the American public. The insurance industry and the defense bar are not trying to destroy the image of the plaintiff's lawyer before the public, nor to prejudice jury thinking. They are simply trying to tell their side of the story in a correct and honest way. If NACCA with its fifteen thousand lawyers cannot tell its story to the public as ably as many of its lawyers have sold a case to the jury, there is something wrong with either its approach or with its case.

And speaking of the image of a lawyer, I wonder if the lawyer specializing in prosecuting claims for a plaintiff, or the lawyer who has a tort claim on occasion ever stops to think of what the insurance image connotes. If he had to depend upon the financial stability of the majority of the defendants who are individuals, it is safe to say that most of the time his client would be either uncompensated or only partially so. Absent liability insurance, or some counterpart, thousands of business firms would have become bankrupt and the savings of thousands of families would have been wiped out in paying tort judgments. If the plaintiff's lawyer, having recognized the place of the insurance company

[11] 11 Wis. 2d 604, 106 N.W.2d 274, 280 (1960).

in our economy, would only be fair at all times in his presentment of a claim, if he would turn down the case of no liability, and if he would reduce his large contingent fee, some of the expenses of the insurance industry would be lowered and some of the insurance companies with deteriorating and practically infinitestimal underwriting profits would be able to improve their position.

I believe in contingent fees in personal injury cases, but I am convinced that there are many lawyers taking these cases who charge unconscionable fees, sometimes up to 50% of the amount of recovery. I am convinced also that the outsize contingent fees have played a part in the rise of insurance rates. As a former Professor of the University of California stated:

> Contingent fees are good when they assist an otherwise helpless litigant to secure his right against a powerful antagonist. They are bad when they deprive this litigant of a substantial part of the compensation for his injury.

It is out of the pockets of the citizens of your state and its communities, and not out of some inexhaustible, self-replenishing well off far-away insurance company dollars, that personal injury verdicts must be paid. These dollars are home town dollars which, in most instances, have been on a round trip to some insurance center. Looked at in this way, the interests of both today's defendant and of today's personal injury plaintiff who may perhaps himself, in turn, be tomorrow's defendant fall into like relation.

Insurance rates are made by everyone who drives an automobile, including the drivers who serve on juries, and by the awarding of verdicts on the theory that the money comes from the bottomless vaults of rich insurance companies, instead of the pockets of people like themselves who are paying insurance premiums. These insurance rates are geared directly to the driving performance of the various communities.

In this day and age, the path of the plaintiff is rose-petalled. He is represented by one of the many outstanding lawyers available to represent him. He is protected by the courts, whose actions more and more almost without exception, make it easier for him to get his case to a jury and to obtain a verdict. My good friends on the plaintiff's side of the table are carrying on a continuing assault on the doctrine of *stare decisis*. They would eliminate contributory negligence (there are only approximately six states with comparative negligence), the requirement of privity in warranty actions (which your state insists upon), and many other time-honored but still needed legal doctrines. The contributory negligence doctrine is one of several rules that make up a basic disciplinary policy and attitude of our jurisprudence.

One of the leading plaintiff's lawyers, James A. Dooley of Chicago,

several years ago noted that ". . . every lawyer with any experience in lawyering recognizes that today the prime problem in our legal world is the preservation of the jury system . . . ." He said also that, "Our existing system is now hanging in the balance. Any movement might swing the balance against the judicial system. Our interest must be that of the public. We can only serve the public by protecting our present system."

There is a continuing quest on the part of plaintiff's lawyers to change the law in order that they may recover verdicts in fields of law not previously sanctioned, and to recover larger and still larger verdicts. The law as it presently exists gives the plaintiff and his lawyer all the best of it. Do not kill the goose that lays the golden eggs.

Mr. J. A. Travis, Jr., of Jackson, introduced Mr. Perry Nichols, of Miami, Florida, who delivered the following address.

THE PLAINTIFF'S LAWYER'S RESPONSIBILITY

Perry Nichols

I have been asked to speak to you on the "Plaintiff's Lawyer's Responsibility." I come before you to talk about a trial from an advocate's standpoint. I do not come before you to criticize insurance companies or defense lawyers. I think that although the trial field in this country has some of the finest and most outstanding lawyers in existence, the art of advocacy is dwindling in this country when it should be increasing. I encourage you younger men to get into trial practice. I think there is a great opportunity in the trial field, so much so that in my state I sponsor three scholarships in each one of the Florida law schools to develop the advocate in the trial field. I think there is a great need for trial lawyers in this country. We need somebody to represent the unjust cause and to stand up and be counted when it is necessary to present a matter in the court room, whether it is a criminal matter, a will contest, or personal injury litigation.

Now you have asked me to discuss and demonstrate some aspects of final argument and other phases of a personal injury action. In doing so I ask you to assume that we are talking about a serious and meritorious case in which liability has been established. I am speaking solely from the viewpoint of an advocate of the plaintiff's cause, especially since I am sure that my friend, Welcome Pierson, will very capably present the other side in a few moments. I emphasize that this is a personal injury case. I am not seeking a divorce or an injunction. I am seeking damages, and in the trial of these cases one of the first things that you should do is tell the jury, "We are here in a damage suit." Early in the voir dire I introduce everybody. I say:

> My name is Perry Nichols and this is Mr. Bill Smith from my office. We represent the plaintiff, Mr. Charles Brown, who sits over here. This is Mr. Welcome Pierson who represents the defendant, Mr. Dick Jones. Mr. Smith and I brought this action on behalf of Mr. Brown. We are here seeking damages.

It is the responsibility of the plaintiff's lawyer to advocate his client's cause in a damage suit, and to get every dollar—not a quarter more or a quarter less—to which the plaintiff is entitled by the evidence. Assuming, as we are, the existence of liability, I am going to talk to you about carrying out this responsibility by getting the jury to render to your client a fair and just verdict. Let us further assume that we are seeking a substantial verdict. In this light, I will ask of each juror questions such as the following:

Q. Mr. Green, we are here in a damage suit, as you have heard me explain. Will you follow the court's instructions as to the elements of damage?
A. Yes.
Q. When you go back to the jury room will you, along with your fellow jurors, consider each one of the elements of damage?
A. Yes.
Q. The judge is going to instruct you, for instance, that one of the elements of damage is the recovery of the medical bill. Will you consider that?
A. Yes.
Q. Will you consider what is a fair amount for the loss of earnings?
A. Yes.
Q. Will you follow the court's instructions in allowing a fair and reasonable amount for the pain and suffering that this man has experienced?
A. Yes.
Q. Suppose that when you take into consideration all of the various elements of damage that the court tells you are recoverable in this type case the total comes to a large and substantial amount. Will you bring in such a verdict?

Alternatively, you could say:

Q. This is an action for $400,000.00. If under all the evidence, we prove to you that the plaintiff is entitled to recover $400,000.00, would you hesitate to bring in such a large verdict?

See what he says; you might as well find out. I have had them say, "I would not return a verdict over $50,000.00." This usually gives you a chance to go further. "Then apparently, Mr. Jones, you are not going to follow the evidence in this case, and you are excused." You may find in such a case that you can turn to the court and have the juror excused for cause. But it is your responsibility.

In these questions you are, of course, testing the juror, and you are entitled to find out how he feels about money. You are there for damages, so don't be embarrassed about talking about money. In doing so, you should start from the word "go," because these men have to find out somewhere along the line that this is a damage suit involving $400,000.00. If you keep it a secret, you are not advocating the plaintiff's cause.

I think it is very important in the entire handling of the case, and particularly in the final argument, to get the jury to feel that they are doing their civic duty and that there is a moral obligation to follow the law and to include all the damages, bringing in to the plaintiff every dollar to which he is entitled. You should impress upon them that this is a civic, community affair in which they are engaged, because it gets it away from the idea that this is just another damage suit. When the jury gets a feeling of civic pride in their responsibility, they will bring in the amount to which the evidence entitles you. Behind the bench in our courtroom is a sign that says, "We who labor here seek only the truth." I point that out to the jury in my final argument and I say:

> That is what we lawyers are advocating. It is our duty and responsibility to seek only the truth. I told you we took this case on the basis of its merit and that is how we want it tried. We don't want the case tried on the basis of any prejudice against the railroad, nor do we want it tried on sympathy for the plaintiff simply because he has been horribly injured. This case is not to be tried on sympathy for the plaintiff or prejudice against the corporate defendant, but on its merits alone. Both parties are entitled to a fair trial in our courts. The courtroom and the right of trial by jury is one of the most sacred things we have in this country.

Gentlemen, I don't say that my way of doing these things is necessarily correct; that is just my way of doing them. But if you pick one thing today, one suggestion that you can use in a lawsuit, then I am tickled to death that we have accomplished that much. But when you take it, don't use it as I say use it, or do it as I do it. Take that suggestion to your locale, put it in the atmosphere of your country or your city, and adapt it to your personality. What might work for me in Miami might not work in the same form for you in your courtroom, but if you take it and mold it, embellish it or cut it, if you apply original thinking and imagination, perhaps you can come up with something of value. A lawyer must be original, and in this regard I would like to say that I always enjoy being around Francis Hare. I think he is one of the outstanding trial lawyers in this country, because he does original thinking. There are too many lawyers today who don't do any original thinking. Too many lawyers are conformists; they are in a straight-jacket. If I

had been a conformist, I am sure that I would not be on this platform today.

I am a rebellious type of a lawyer who thinks the plaintiff is entitled to his day in court. I tell the jury just that in my final argument:

> Gentlemen, this is the plaintiff's only day in court. He can't come back next year. He can't come back two or three years from now when his traumatic arthritis has gotten worse and say "Wait a minute, gentlemen, you didn't award me enough—I need some more," or "Wait a minute, gentlemen, the medical bills have run up to considerably more than I anticipated." Today is his only day in court, and ladies and gentlemen of the jury, this is the only day you can render justice to my client in his case.

I emphasized on voir dire that each juror should follow the law as stated in the court's instructions. Now, in final argument, I return to that point:

> You have heard the court's instructions on the law. This is not the law that Perry Nichols has devised for the plaintiff; this is the law of the State of Mississippi. This is the law that you and your legislators and the state have said is applicable in all cases of this kind, not just for my client. You have taken an oath today to follow the law and you promised me earlier that you would do just that. Now I am asking you to follow it, regardless of what your personal opinion may be as to what the law is or should be.

Let us assume for the moment that our case is for wrongful death instead of just personal injury. To aid the jury in the difficult task of evaluating human life, I would say:

> Your job is to determine the value of the life of this husband, the value of a human being. This thirty-two-year-old widow and these three minor children are asking you to pass upon the value of that human life. This husband was a special person, a particular person, a person who had a separate identity. This is the only man that the plaintiff was in love with; this is the man she sought to marry, and did marry, and this is the man that loved her and this was the man that gave her, as a result of this fine marriage, these three fine minor children. This was the man that she picked out to live with the rest of her life, and he is a special man and a special identity and a special person to her.
>
> Marriage is one of the most wonderful things that God ever created. What finer relationship is there than marriage between a man and wife who are deeply in love with each other? When you hear the court's instructions on the loss of compassion, consortium, society, and affection of the wife, they are telling you about the deep love affair and the fact that these children were not brought by the stork. This lady must face now a future

of fears instead of love. There will be the fear of waking up lonely at night; there is the fear of noises and being scared; the fear of lack of security, and the fear of lack of companionship that she has had. There is a vacant chair when they sit down at the table at home. There is the chair that her husband has sat in for ten years. The golden years, when these children are grown up and gone away, must be faced by this widow now alone; instead of being golden years they are gray years.

Now in addition to that, these children have lost their father image. Fifty percent of the moral guidance was by this husband who has been killed and fifty percent of that is gone for these children. Think of the many ways that a father and the parents give guidance to their children. This father helped these children in scouting, he drove them to school, they built model airplanes together, they went to church together. He taught them to fish, he taught them to play baseball and taught them the right and wrong of the sport. How is that going to be replaced with this mother? Is that mother going to play baseball and teach them how to play? Is she going out in the boat with them and teach them how to use a fly rod, or is she going to be able to teach them how to shoot a gun and teach them the right and the wrong? These children have lost fifty percent of their parental guidance. Think of the various things that this father has done. The child got comfort when it was sick, encouragement when it had good report cards and a licking if it needed one.

Now ladies and gentlemen, you may hear my opponent say that we are trying to create sympathy. I told you in the beginning we don't want sympathy in this lawsuit. She gets more sympathy from the neighbors than she knows what to do with, but sympathy won't buy the groceries and sympathy won't educate these three children in college either. I am sure that the defendant will give us a lot of sympathy but we are not in here asking for sympathy. This is a damage suit and that is what we are here talking about.

Now there are several ways to talk about damages. About forty percent of the time, I guess, if a case warrants it, you can use a board and use the per diem argument, which a lot of these defendants are going to swoon about. We don't use this in every lawsuit; it is used only in cases where you have serious permanent injuries and cases where you have long life expectancy and a considerable amount of earnings. I think it's bad strategy from the plaintiff's standpoint to take a small case and try to work it up in a per diem argument on so much an hour for pain and suffering, and so forth and so on. You lose your effectiveness in doing so. But when I have a serious case I use the board and the per diem argument. I use a canary yellow board of adequate size and a black, heavy crayon. The board is used to be seen, so don't hide it. I tell the jury:

> I am going to show you how we figure up one of these cases. We, you and I, gentlemen of the jury, are going to solve this problem. Now, these are the damages that the court's instructions will tell you are recoverable in a case of this kind.

Then, when the charge does mention the elements of damage as listed on the board, the juror says to himself, "That's what Nichols said." Discuss each one of the elements of damage for ten or fifteen minutes before you put it on the board. Progress through the various items, gradually approaching your grand total, the one you have been talking about all through the case. Forty-five minutes of detailed explanation of the damages gives the jury a logical and understandable basis on which to make their award.

Now it comes time to say:

> Gentlemen, what I am doing here is your province. I am not trying to transgress on your prerogative as a juror. It is your sole duty when you go back in that jury room, with nobody except your enlightened conscience to tell you, to bring this plaintiff what he is entitled to. You can bring this plaintiff nothing, you can bring him $1.35 or you can bring the $400,000.00 that I think it ought to be. It's up to you to bring in whatever amount you think this plaintiff is entitled to, and I call upon my opponent to discuss with you, when I sit down, each item of damages involved in this case. Don't let him just scoff at this figure and tell you, "Oh, that's ridiculous —it's only a dream figure." I ask him to point out item by item where there is an error. As a matter of fact, I ask him to say what amount he would bring if he were representing the plaintiff in this type of a case.

You might as well anticipate him because you know he is not going to like the figure, one way or the other. If he does step in and argue it, then you have got him arguing the damages, which is always a dangerous thing for the defendant to do, and if he doesn't do it, you can really crawl on him when you get back that he didn't even argue the damages.

I might conclude my argument somewhat as follows:

> When you go back in the jury room, you discuss the amount you feel is right and just to put down. On some of these you may disagree and put less and on some you may put more. It is your prerogative to assess these damages, and you figure it out item by item, but it's your obligation and sworn duty to take each element of damages and award this man the amount that he is justly entitled to under each element.
>
> I knew it was going to come to a large and substantial amount when I was selecting you and that is the reason I asked you if it would frighten you to bring in $400,000.00. Now I knew what the life expectancy of this man was and what he

was making. I knew at that time what you now know and what you have heard the evidence of for five days.

I want to talk with you a little bit about the value of the dollar. All of you know the value of the dollar has gone down and is now only worth about fifty cents on the dollar. If I was trying this case twenty-five years ago this man would probably have been making $2,000.00 where today he is making $5,000.00. Now then, if I had been asking you for the verdict twenty-five years ago, this amount would have been less, but the cost of living has gone right straight up and I don't know of anything that is going to bring it down. We have to project this over the next thirty-five years of these peoples' lives, and the cost of living is still going to go right on up, so if twenty-five years ago he was making $2,000.00 and now he is making $5,000.00, let's take it twenty-five years forward. Isn't that fair? I remember when I could go into a grocery store ten or fifteen years ago and buy a week's groceries for five dollars. Now you can hardly even find anything in the bag for five dollars. A suit of clothes used to cost thirty-five or forty dollars. Now it costs seventy-five or eighty dollars. You used to get a place to live for twenty-five to fifty dollars. Now it costs a hundred to a hundred and twenty-five dollars, or a hundred and fifty dollars to rent the same housing space. I am talking about the practicality of money. It takes more to live, it takes more for food, it takes more for the clothing of these children, it takes more to educate these children, and it's taking more all the time as we go along. That is the reason I am asking you for a substantial sum of money.

I remind you that we are talking about the value of a human being. Suppose that the vehicle that was involved, instead of the car in which my plaintiff was riding, had been a big van truck, and in that van truck was Needles, the outstanding race horse of the country. If this same accident occurred and the horse had broken his leg and the owner had to shoot him, would you hesitate to bring in $300,000.00 or $400,000.00 for that horse? Don't you think this human being, the man you have heard all this testimony about as to his reputation in this community, is worth more than that horse? I saw the other day in New York where somebody paid $500,000.00 for a Rembrandt picture—a picture. All you do is look at it. It hasn't got life, it's not warm, it's cold and in a frame and it hangs on a wall. But did you get upset about the fact that they paid $500,000.00 for that? In the Air Force and the Navy when a million-dollar plane is in trouble, what do they tell the pilot? "Bail out, bail out, let that plane go down." And a million dollars goes down. Do you get upset because they say, "Save your life and let the property go down"? No, you don't get upset about that, do you?

Life versus property. Think of the millions and the billions spent at Cape Kennedy on the safety of our astronauts before they let one single man in America go out. In a country where we have 185,000,000 people did they sacrifice one single life and

did you get upset about the billions that they were spending to see that we don't lose a single man? I remember when Grissom made his flight. The whole nation was watching with bated breath. When he landed the nose cone went down and everybody froze, but finally, you saw Grissom crawl out of that thing and everybody took a great sigh of relief. The nose cone went down—millions went down. Did you get upset about it? No, because that one man's life came out of it.

My client is just as valuable as Mr. Glenn or Mr. Grissom and that is what we are talking about here today, and what I am asking you to do is to render justice. As a matter of fact, you have seen that the medical bills in this case are already $11,600.00, and another $3,400.00, which is about $15,000.00. All that has to be paid back to doctors. Hospital bills have to be paid back. He has a tremendous amount of expense. You have seen all of these engineers' sketches, the expert witnesses, the photographs and other expensive things ncessary in preparing this case. This man has had a tremendous cost to the present time and his cost is going to continue. I am asking you to bring him every dollar that he is entitled to, and don't go back there and say, "Well, we'll cut it down seventy-five cents on a dollar," because if you do you are only rendering seventy-five percent justice and you are rendering twenty-five percent injustice. You bring this man what he is entitled to.

Quite frequently I hear discussed, "If we bring in too large a sum there might be an appeal taken." You let us lawyers take care of the legal matters. We practice law upstairs the same as downstairs. You bring in every penny this man is entitled to, no more and no less, and then we will be satisfied. When you come back into this jury room I am going to be sitting right here with this plaintiff looking you straight in the eye as you come out, because I know that you are going to render justice and fairness to this plaintiff. We think we have proven this case and we are entitled to this verdict, and that's all that we are asking you to do here at this time.

Now, ladies and gentlemen, I have been reading a number of Mississippi cases in the Southern Reporter, and I am surprised at the actions of some of the courts concerning verdicts. Every person I have found in Mississippi is a good, warm, congenial person. I think that your citizens of Mississippi are just as fine as the people and the citizens of the State of Florida, and when they have their legs broken or their backs injured that they are entitled to the same amount of dollars that they are in Florida. Once a jury of citizens, who, incidentally, pay these insurance premiums and know that they are paying the premium, have heard the evidence in the trial of the case and say that Mr. X is entitled to seventy-five or a hundred thousand dollars, under our judicial system, I think that that is the verdict of the community. That is the verdict of the state, and that action should stand unless there is some legal reason to set that verdict aside and enter a remittitur. I am

surprised, frankly, at the great number of remittiturs that are coming out of the State of Mississippi, because I think that when the judge tells you, "Ladies and gentlemen, you are the sole judges of the evidence," he means it. The damages are part of the evidence. If the judge is going to enter a remittitur, then why doesn't he say, "Go home, gentlemen. I am going back in my office and commune with myself, and I am going to render this verdict. It doesn't make any difference what you men do. Just go on home." Let's abolish the jury system if you are going to have a trial by a judge. On the other hand, in the appellate courts, you argue a matter for twenty or thirty minutes in what is virtually trial de novo if the court is going to enter remittiturs.

If they reverse the case and let you come back and try it, all right, but when a judge puts a ceiling on it by entering a remittitur he is, in effect, being the jury; he is, in effect, arbitrarily saying that, "I'll never approve any more than this," and he prohibits the plaintiff from either negotiating or settling the case. Now if the American people who are paying the premiums hear the evidence and say that Mr. X is entitled to X number of dollars and it is within the legal bounds of the evidence, I don't think that we ought to have trial by judge or trial by appellate court. I say that with complete respect to the judiciary of the State of Mississippi, because I think the people of Mississippi are just as fine as the people of Florida or just as fine as any other state in this nation and are entitled to adequate verdicts and justice in these types of cases.

Mr. M. M. Roberts, of Hattiesburg, introduced Hon. Welcome D. Pierson, of Oklahoma City, Oklahoma, who delivered the following address.

THE DEFENDANT'S LAWYER'S RESPONSIBILITY

Welcome D. Pierson

I. Introduction

Mr. President, Distinguished Members of the Judiciary, and fellow lawyers. After listening to that warm and generous introduction, I can hardly wait to hear what I have to say! After all, an introduction is like a chew of tobacco—fine, if you don't swallow it! When I say I am pleased to be here, I want you to know I really mean it. I try to accept all speaking engagements tendered me by Southern states. The people are so friendly and make you feel like you are really wanted.

I like the South because of your distinguished citizens and historians. I like the fairness used by Southern historians in describing the thrilling events of the Civil War. A few months ago, I read a description of the Battle of Vicksburg by a Southern historian. He said, "The

Union Army charged the City of Vicksburg with a valor worthy of a far nobler cause."

I was privileged to speak to your Association on this seacoast about six or seven years ago. On that occasion, I defended the railroad in a mock trial. The jury was composed almost entirely of beachcombers, aided and abetted by their procurers. After my friend, Jim Dooley of Chicago, and I completed the trial of the case, the jury returned the customary verdict in favor of Jim's client, the estate of the dead man killed in the crossing accident. I was feeling a little unhappy when I observed a group of well-dressed, "stall-fed" lawyers who professed to be representing the railroads in the South. One of them made me feel a little better when he commented, "Don't feel too badly about this matter, Mr. Pierson. The railroads have not won a case in this territory since the Civil War!"

I am here today to make you a speech and you are here to listen, but if you get through before I do, please feel free to leave. The subject assigned to me is "Defendant's Lawyer's Responsibilities". The defense attorney certainly has responsibilities and problems. I sometimes feel like the dog surrounded by four trees, "Not a leg to stand on".

Primarily I am here today to visit with you a little bit about jury trials.

The trial of a law suit has been described as "an orderly search for the truth rather than a contest between two legal gladiators".[1] The Supreme Court of your neighboring state of Tennessee in an early case comments, "The vindication of justice, not of advocacy is the true concern [of jury trials]."[2] The definition I like best is the one furnished by Justice Jackson of the Supreme Court of the United States. He says, "[A] common law trial is and always should be an adversary proceeding".[3]

An attorney must ever be mindful that his opponent is his adversary. He should deal with him accordingly. This does not mean that attorneys need be quarrelsome or unreasonable with each other. They can be friends but friendship ceases when they are upon opposite sides of a contested trial.

Trial lawyers should possess a working knowledge of the laws of negligence and the rules of evidence but a "book-worm" is not always the best trial lawyer.

I am indebted to my old friend the late Arthur Gray Powell of Atlanta, Georgia, for summing up the situation in excellent language as follows:[4]

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[1]VANDERBILT, CASES ON MODERN PROCEDURE AND JUDICIAL ADMINISTRATION 10.

[2]Watkins v. State, 140 Tenn. 1, 203 S.W. 344, 345 (1918).

[3]Hickman v. Taylor, 329 U.S. 495, 516 (1947) (concurring opinion).

[4]PIERSON, THE DEFENSE ATTORNEY AND BASIC DEFENSE TACTICS 22 (1956).

> An old Southern judge, in lecturing to young lawyers, is credited with advising as follows: "A knowledge of law is a bad thing for a lawyer. It may be against him and give him less confidence in his case. Study the facts and the jury, and the law will take care of itself.
>
> Law is a science, but the practice of law is an art. An art that no law school can impart; it is not to be learned from books. It is just as impossible for a baseball player to learn how to bat 400 in a big league by reading books on the subject as it is for the lawyer to learn out of books how to try a case. In these things there is no substitute for experience."

All good trial lawyers possess a knowledge of the laws of negligence and the rules of evidence. Such knowledge is essential, but he cannot and should not try to be a walking encyclopedia of law. A writer has said, "It is rare for a negligence case either to present a disputed question of law or lack a disputed question of fact."[5] An educator referring to the scholastic degrees possessed by the school faculties in the State of Kentucky remarked, "A pedigree is worthless if the horse can't trot."

There is a measure of truth in the comments of the old Southern judge, "Study the facts and the jury, and the law will take care of itself." "A pedigree is worthless to the trial lawyers "if he can't trot" in the courtroom.

II. Jury Trials

Trial by jury is the greatest system ever devised by man for the determination of disputes between citizens. "Ill fares the day and to hastening ills a prey" when any man or group of men seek to abolish the right of trial by jury in the trial of civil and criminal cases in America. From a sentimental standpoint they seek to abolish those sacred principles the embattled barons, armed with pitchforks and clubs, wrest from the tyrant King John on the historic meadow of Runnymede. The academic argument over the abolition of jury trials has existed for more than half a century but the trend has always been ". . . that trial by jury should be preserved and strengthened rather than eliminated or weakened."[6]

The greatest tribute ever paid to the American Jury System is the language of the Supreme Court of the United States in the celebrated Turntable[7] case as follows:

> Twelve men of the average of the community, comprising men of education and men of little education, men of learning and men whose learning consists only in what they have themselves

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[5]Frost, *Preparation of a Negligence Case,* 1946 Proceedings of Section of Legal Education, A.B.A. 1 (1946).

[6]Report of the Judicial Conference Comm. of the U. S., *The Jury System in the Federal Courts,* 26 F.R.D. 409, 417 (1960).

[7]Railroad Co. v. Stout, 84 U.S. (17 Wall.) 657 (1893).

> seen and heard, the merchant, the mechanic, the farmer, the laborer; these sit together, consult, apply their separate experience of the affairs of life to the facts proven, and draw a unanimous conclusion. This average judgment thus given it is the great effort of the law to obtain. It is assumed that twelve men know more of the common affairs of life than does one man; that they can draw wiser and safer conclusions from admitted facts thus occurring, than can a single judge.

Juries are competent to decide questions of fact. They are far better qualified than judges or other tribunals.

> This superiority results, in a great part, from the inherent difference between fixed and casual tribunals. A fixed tribunal is one where the office is permanent and where the person or persons who exercise its functions do so for long terms or periods, and each officer in turn is guided by the precedents established by his predecessors. A casual tribunal is one summoned from the body of the people for the occasion only, or for a very brief term of service, and who consequently bring to the discharge of their duties a freshness and earnestness unknown to fixed tribunals, and who decide the controversy submitted to them upon its merits, unembarrassed by precedents. The judge represents the fixed, and the jury the casual tribunal.[8]

Jurors reason together. The verdict represents their composite views. If one juror is obstinate or prejudiced the other jurors may convince him his position is unsound. The judge has no one to talk to or reason with during his deliberation. If he is prejudiced there is no one to combat the prejudice.

It is not that the bar lacks faith in the judiciary. Most judges are honest and conscientious and seek to be fair and impartial. It simply means that lawyers "have more faith in the collective decision of average people" than in the sole decision of one judge. It has been said, "In a disputed situation, two heads are frequently better than one, and, by the same token, twelve heads are better than two."[9] Juries "bring to the aid of the court those untechnical, fresh and original conceptions of justice and right which act as a constant corrective to the formalizing tendency of the court."[10]

Judges are human. Like many people they sometimes consciously or unconsciously develop a certain pattern of reasoning. In this day we hear of plaintiff's judges and defendant's judges. Assume the judge in a certain jurisdiction had a tendency to lean towards either the plaintiff or the defendant. The attorney representing the other side

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[8]Caldwell, *Trial by Judge and Jury*, 33 Am. L. Rev. 321, 338 (1899).

[9]Nunnelley, *When a Trial by Jury?*, 43 J. Am. Jud. Soc'y 87, 88 (1959).

[10]Hall, *The Present Day Jury: A Defense*, 10 A.B.A.J. 111, 113 (1924).

would doubtless be compelled to try all his cases before a tribunal he at least felt to be prejudiced.

This is not true with juries. Attorneys have the absolute right to challenge jurors they consider prejudiced. While the right to disqualify judges exists, it is a cumbersome process and seldom bears fruit. All active attorneys have been confronted with being compelled to try cases during a term of court before jurors they felt as a group were prejudiced against their side of the litigation. The situation was only temporary. During the next term of court he might find the jurors as a group more sympathetic to his side of the litigation. He is not compelled to spend the balance of his professional career trying cases to a tribunal he considers prejudiced.

It is astonishing to observe the keen insight of jurors in the trial of cases in ferreting out the truth. Jurors sometimes overrule the testimony of experts. A few years ago a case was being tried in Spokane, Washington. A family had purchased a sack of flour from the Contennial Flour Mills. They claimed to have suffered illness from the use of the flour and after recovering, examined the bag of flour and found in it a dead mouse. At the trial of the case the plaintiff testified that she had dipped chicken in the flour before frying it. The trial resulted in a battle between experts. Experts for Contennial testified that it could not have been a Contennial mouse since it probably would have been flattened by the machine before packaging. Therefore, it must be the plaintiff's own mouse. An expert on rodent control, wearing rubber gloves to handle the object found in the bag of flour, testified that in his opinion it was either a mouse or a baby rat. Other experts gave profound testimony on the possible diseases that could be caused by rodents. But the fact remained that the plaintiffs had eaten fried chicken dipped in the flour and had become ill shortly afterwards. The evidence was completed and the case submitted to the jury. No one had reckoned with the ability of the good old American jury system. About an hour after the jury had retired the Foreman rapped on the door and asked the judge if it would be all right for them to soak the flour covered mouse to give the evidence further scrutiny. The judge agreed and the jury again retired for further deliberations. A short time later the jury returned into the court with a verdict for the defendant, denying the plaintiffs any recovery. The reason was simple; the jury examined the evidence by soaking it in a glass of water. The object supposed to be a mouse turned out to be a chicken liver.

III. Voir Dire Examination

The voir dire examination of the jury when attorneys are permitted to personally question the prospective jurors is one of the most im-

portant phases of a jury trial. In a majority of state jurisdictions and at least twelve Federal jurisdictions, attorneys are permitted to personally conduct the voir dire examination.[11]

There are cases holding that under certain circumstances the "refusal to grant" a party the right to have his attorney personally interrogate the jurors constitutes "prejudicial error."[12] It is more convenient and better practice to allow such examinations to be conducted by counsel in the cause, the court judicially supervising and directing it. Regrettably, in recent years there has been a tendency to curtail and restrict the right of an attorney to personally conduct the examination.[13]

Literally, the term "voir dire" means "to speak the truth."[14] The truth can best be developed by the attorney familiar with all the facts and circumstances doing the questioning of jurors.

The voir dire examination is like the overture of an opera or the prologue of a play. It introduces the actors to the jury and gives them a glimpse of all they will see and hear during the trial. While assuming their places in the jury box, the jurors have at most secured only a fleeting view of the parties and their attorneys. They become better acquainted with them during the voir dire examination.

Most courts are liberal in the scope of the voir dire examination. They will permit almost any question relating to the qualifications of an individual to serve as an impartial juror. The questions should be carefully phrased, direct, and to the point. Definite information or definite reaction should be sought with the asking of each question. Often it is not the juror's answer which is important, but the attitude or facial expression he reveals while giving his answer.

In recent years ingenious plaintiffs' attorneys have attempted to stimulate the thinking of the jury towards the return of high verdicts by constantly referring to large sums of money during the voir dire examination. They advise the jury of the amount sued for in the ad damnum clause of the complaint. The practice is unfair for the reason that lawsuits are generally brought for a far greater sum than the plaintiff expects to receive. The practice has been condemned in several jurisdictions.[15]

Likewise, courts hold the mischief created is not cured by the giving of cautionary instructions by the court as it is "extremely doubtful whether such admonitions are sufficient to eliminate the figure from their (the jurors) minds as a conscious or unconscious factor in reaching

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[11]Report of the Judicial Conference Comm. of the U. S., *supra* note 6, at 466.

[12]*E.g.*, Oden v. State, 166 Neb. 729, 90 N.W.2d 356 (1958).

[13]Christian v. New York Cent. R.R., 28 Ill. App. 2d 57, 170 N.E.2d 183 (1960).

[14]People v. Rendigs, 123 Misc. 32, 205 N.Y. Supp. 133 (Ct. Gen. Sess. 1924).

[15]*E.g.*, Saint Louis-S. F. Ry. v. Dyson, 207 Miss. 639, 43 So. 2d 95 (1949).

their verdict."[16] "Admonitions by the court . . . will not be sufficient . . . ."[17]

Continuing his plan to prejudice the jury by referring to large sums of money, the attorney for the plaintiff will quite frequently propound to the jury questions patterned on a New Jersey case,[18] as follows:

> Q. Now the plaintiff sues for a large sum of money. Do you have any feeling against returning a verdict for a large sum of money if the facts justify it?
>
> Q. I'll put it this way. Do you have any qualms against awarding a verdict for say $300,000? Would you have any hesitancy in bringing in a verdict for $300,000 if you believe the plaintiff is entitled to receive it?
>
> Q. Does the sum of $300,000 frighten you or give you any concern?

"Whatever may be the cold logic or academic theory of the matter, the ungilded reality is that" such questions are "calculated and designed to implant in the jurors' minds definite figures and amounts" which cannot be supported by the evidence, and "to influence the jurors to adopt those figures and amounts . . . ."[19] Such practice is condemned by courts in well reasoned court cases.[20]

Defense attorneys cannot always rely on appellate courts holding this type of questioning to be improper. There are methods they may employ in counteracting the harm done by such questions.

Among the prospective jurors called to serve on the average jury panel, there is almost always a big, rugged, muscular man whose physical characteristics indicate that he would not be afraid of anything. He is the type of man one wonders where Frank Buck "got him and brought him back alive." It is effective to question this type of individual as follows:

> Q. Mr. Juror, are you frightened or do you have any hesitancy or any qualms in doing anything you are required to do in connection with the discharge of your duties as a juror?
>
> Q. Does the fact that the attorney for the plaintiff has repeatedly referred to the sum of $300,000 inferring that this would be a proper sum for you to return as a verdict in the event you find in favor of the plaintiff in any way lodge in your mind the idea that the plaintiff is entitled to recover such sum of money or any other amount of money?

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[16]Botta v. Brunner, 26 N.J. 82, 138 A.2d 713, 725 (1958).

[17]Hollinger v. York Rys., 225 Pa. 419, 74 Atl. 344 (1909).

[18]Purpura v. Pub. Serv. Elec. & Gas Co., 53 N.J. Super. 475, 147 A.2d 591 (App. Div. 1959).

[19]Faught v. Washam, 329 S.W.2d 588, 603 (Mo. 1959).

[20]*E.g.*, Purpura v. Pub. Serv. Elec. & Gas Co., *supra* note 18.

Q. If after hearing the evidence you are convinced that the accident was not caused by any fault of the defendant or was the result of plaintiff's own fault will you find for the defendant regardless of the fact that the attorney for the plaintiff insists that you give the plaintiff $300,000?

Q. Do you have any qualms or hesitancy in returning a verdict in favor of the defendant or for a much less amount than $300,000 if you feel that such verdict is justified under the evidence?

Q. Do you know how much money $300,000 is?

This question frequently causes a little levity among the jurors which generally redounds to the benefit of the defendant. The question is a proper one to be asked for the reason that lawyers are entitled to know the entire background of prospective jurors. This question may be followed with another as follows: Q. "Do you possess $300,000?"

The above questions carefully phrased and propounded at the very beginning of the trial have a wholesome effect on the jury. They implant seeds of thought in the minds of the jurors. Jurors may early commence thinking that the claim of the plaintiff is for a ridiculous amount and that the attorney for the plaintiff is attempting to control their reasoning and influence them in returning a large verdict to which the plaintiff is not entitled.

IV. Mathematical Formula

The most serious threat to the stabilization of jury verdicts arising in recent years has been the development by ambitious attorneys for the plaintiffs of the so-called "mathematical formula doctrine" for use in arguing to the jury the amount of money to be awarded an injured party for physical pain and suffering. In furtherance of the plan, attorneys representing injured plaintiffs seek to argue to the jury that the plaintiff is entitled to recover a certain specific sum of money per minute, hour, day, month, and year for pain and suffering during the balance of his life expectancy.

There is a conflict of authorities over the propriety of permitting such practice.[21] Your own state, Mississippi, has approved of the practice to the extent of permitting a chart containing the figures to be exhibited to the jury during the opening statement of counsel, during certain stages of the trial and argued to the jury during the summations. The case is by a divided court with two judges dissenting.[22]

The more recent cases hold that where the use of the formula is permitted the court upon request is required to give the jury cautionary

[21]See Affett v. Milwaukee & Suburban Transp. Corp., 11 Wis. 2d 604, 106 N.W.2d 274, 278 (1960).

[22]Four-County Elec. Power Ass'n v. Clardy, 221 Miss. 403, 73 So. 2d 144 (1954).

instructions plainly spelling out that "such presentation is but lawyer talk, not to be considered as evidence or as a substitute therefor."[23]

It is best for the defense attorney to request the court to submit to the jury a carefully prepared instruction encompassing the principles of law declared in the adjudicated cases.

A suggested instruction is as follows:

> Members of the jury, you are instructed that the court has permitted you to view certain charts and figures written on the blackboard portraying the ideas of the attorney for the plaintiff concerning the value to be placed on the pain and suffering sustained by the plaintiff, if any. The court will permit the attorneys to comment on these charts and figures during their argument. (This portion of the instruction should be changed to "has permitted" in jurisdictions where the argument precedes the court's charge to the jury). You are cautioned that these charts and figures are not evidence and are not to be considered by you as evidence. No evidence has been submitted to you establishing the correctness or incorrectness of the amounts and figures submitted. You are instructed that these charts and figures are merely the conception and ideas of the attorney preparing them. They are merely "lawyer's talk" and not evidence. You are not bound by these charts and figures or the amounts indicated by them, and may disregard them entirely if you desire to do so. The amount to be awarded the plaintiff for pain and suffering, if you find from the evidence he suffered pain and suffering, is solely for your determination, from the evidence, and should at all times be fair and reasonable for the pain and suffering sustained by the plaintiff, if any.
>
> In this connection you are instructed that the degree of pain and suffering sustained by any individual varies from day to day. An individual may suffer more severe pain on one day than on another day. It also varies with individuals. One individual may suffer more intense pain and suffering from a given injury than another. These are all matters for you to give such consideration as you determine proper in determining the amount you shall award, if any, to the plaintiff, for pain and suffering. You are not required to surrender your good judgment in favor of the amounts and figures suggested by an attorney.

The defense attorney may make excellent use of the suggested instruction if given in his argument. If the court declines to give the instruction, the defense may also build an effective argument by discussing with the jury the elements of pain and suffering as outlined in the court decisions previously cited. A suggested argument is as follows:

> Members of the jury, the attorney for the plaintiff apparently has little faith in you. He does not want you to use your

[23] *E.g.*, Olsen v. Preferred Risk Mut. Ins. Co., 11 Utah 2d 23, 354 P.2d 575, 576 (1960).

own good judgment in this case. He wants to tell you what to do. In this great America, we do not like to be told what to do. We like to make up our own minds. The attorney for the plaintiff is not satisfied with having you good people reason out and reach your own conclusion as to whether or not this plaintiff sustained pain and suffering, and if so, to what extent. No, the attorney for the plaintiff in his own selfish way figures that all out in his own prejudiced mind and tells you that you should give the plaintiff $150,000 for pain and suffering. I say that this attorney is selfish for the reason that he is probably working on a contingent fee basis and as he could mislead you jurors into allowing the plaintiff $150,000 for pain and suffering, he would simply have at least $75,000 to put in his own pocket. Now, I do not believe you people are going to go along with the ideas of this attorney for the plaintiff who is attempting to line his pockets with money the plaintiff is not entitled to receive.

I assume that, unfortunately, almost all of you at sometime in life have experienced pain. Pain hurts, but it does not last forever. Now this attorney for the plaintiff, in an attempt to feather his own nest, would ask you to give the plaintiff $10 a day for pain and suffering all the rest of his life. Cold logic simply rebels against such a proposition. A person may sustain an injury and experience severe pain for a few days. The pain then subsides. If it does not, he will call in a doctor and the doctor will give him some medicine for his pain until nature takes care of the situation. There is no evidence is this case that the plaintiff will sustain pain for the next 30 years, but how unreasonable lawyers can get when they are thinking of their own interests, not those of their client. I do not want you to be unfair to this plaintiff simply because his lawyer is greedy. You give this man any amount you feel in your good judgment is necessary to compensate him for any temporary pain and suffering he sustained if you find that the defendant was at fault in this case, but let's not be unreasonable. Let's not let this lawyer make enough from this case to retire. Someone else might need his services sometime. I don't want to put him out of business. I do not want to be mean, but I have the greatest faith in the world in the jury system of this great nation and I want jurors to be permitted to use their reasoning processes and be fair without some selfish lawyer attempting to cram a bunch of exorbitant figures down their throats.

V. Irrelevant Comparisons

One of the new innovations of counsel for plaintiff in attempting to secure larger and bigger verdicts is to argue to the jury that because baseball players or movie stars receive substantial compensation, the verdict should be for an exceedingly large sum. The same argument is made with reference to the annual winnings of race horses. In a Missouri case,[24] counsel for the plaintiff argued, "What is a dollar

[24]Faught v. Washam, 329 S.W.2d 588 (Mo. 1959).

worth? Stan Musial gets $100,000 a year for playing baseball," and after proper objections to that argument had been overruled, counsel continued, "Ted Williams gets $125,000 per year; they are the best. The average professional baseball player gets $25,000 to $30,000 in one year playing ball."

The court reversed the case saying: "Even the casual reader of the sports page understands that Musial and Williams have been able to command salaries in the financial stratosphere, not because of the decreased purchasing power of the dollar, but rather because of the multitudes of admirers drawn through the turnstiles by these exceptionally talented, proficient, and colorful personalities. There was no evidence in this case (and we have read nothing which indicates) that 'the average professional baseball player' is paid $25,000 to $30,000 per year. Furthermore, the instant plaintiff is a service station attendant, not a professional baseball player. Counsel should neither argue nor draw inferences from matters not in evidence."

In an Arizona case,[25] counsel argued: "As to the amount of damages, I sometimes think that we lose our sense of values. I think that Marlene Dietrich would walk across the stage in Las Vegas in a fishnet dress and get $5,000 on Tuesdays and Thursdays for walking across the stage in a fishnet dress, a 56 year old grandmother; we have got 32 race horses in the country in which the purse exceeds $100,000."

The appellate court affirmed the ruling of the trial court granting a new trial saying: "The reference to Marlene Dietrich and to race horses was not relevant to the issue as to plaintiff's damages and did not call upon the jurors to exercise judgment and experience in connection with the ordinary everyday affairs of life in evaluating the testimony."

It is wise for the defense attorney to interpose proper objections to arguments containing irrelevant comparisons and request the court to advise the jury not to consider it. He may also comment briefly on the absurdity of the argument in his closing summation.

The high earning period for a baseball player or a movie celebrity is exceedingly short. At this writing, Stan Musial and Ted Williams have retired, both to less active capacities in the baseball world and are doubtless no longer receiving the high salaries paid them during their active playing years.

It is doubtful if the average professional baseball player earns $25,000 to $30,000 annually. Some may earn such salaries, but for the few who do, there are hundreds of neophyte baseball players earning only a few hundred dollars monthly. In the movie and entertainment

[25]Colfer v. Ballantyne, 89 Ariz. 408, 363 P.2d 588, 591-92 (1961).

world, there are only a few who reach the coveted rank of star, earning thousands of dollars for each appearance. For every movie celebrity earning a high salary, there are hundreds of people working irregularly as extras on movie lots earning $5 to $10 per day, hoping to reach stardom. Most certainly, not all grandmothers can expect to earn as much as Marlene Dietrich.

The idea that the annual earnings of race horses has any connection with the amount to be awarded by the jury as damages in a personal injury action is preposterous. It is a well known fact in racing circles that for every top flight horse earning purses amounting to a hundred thousand dollars, there are hundreds of less productive mounts in the racing stables which really are financial losses to their owners.

Very few plaintiffs are movie celebrities or ball players. They are generally people coming from the middle income class earning far less than people in the entertainment or sports world.

The race horse, movie star, baseball argument has no place in the trial of a tort action, but the defense attorney by adroit handling can cause this ridiculous argument to work to his advantage. A suggested argument is as follows:

> Members of the jury, the attorney for the plaintiff has a weak case and he knows it. He is attempting to bolster up this weak case by talking about the salaries of baseball players and movie stars. He also talks about the annual earnings of race horses. Such matters have nothing to do with this lawsuit.
>
> This plaintiff is not a baseball player or a movie star. He is an ordinary workman and doubtless proud of it. Our forefathers wisely provided in the Constitution that all men have an equal opportunity. This does not mean that all people will be equal in earning capacity. Some few, because of their particular ability, earn high salaries. The greater number of people who are the real backbone of this nation are good common working people earning reasonable salaries, supporting their families, and content with their livlihood.
>
> The Lord says: "Thou shalt not covet." We should not covet the success of others. The idea that, simply because a ball player may earn $100,000 in one particular year, this plaintiff should be awarded an exorbitant sum of money is ridiculous. In considering your verdict in this case, remember the evidence and do not be misled by any ridiculous theory of the plaintiff's attorney concerning the earnings of baseball players or movie stars.

VI. The "Golden Rule" Argument

The so called "Golden Rule" argument, frequently employed by attorneys representing plaintiffs in tort actions, is predicated on the

biblical quotation: ". . . whatsoever ye would that man should do unto you, even so do ye also unto them . . . ."[26]

There are many variations counsel for the plaintiff employs in implementing the biblical quotation. In most instances, he urges the jury to place themselves in the position of the plaintiff and award him such damages as they would want awarded to them if they were in the same position. The argument is patently unfair as it constitutes a sympathetic appeal to the jury and not a fair comment on the evidence.

Courts and legal authorities are in accord in condemning this practice.[27]

Courts have held it is prejudicial error for counsel to tell the jury to "put themselves in the shoes of the plaintiff,"[28] "put yourself in the plaintiff's place,"[29] also, to give the plaintiff "the kind of deal that you would want to get."[30]

If the attorney for the plaintiff attempts to invoke the "Golden Rule" doctrine, the defense attorney should in most instances interpose proper objections and request the court to admonish the jury not to consider it.

In some cases, the defense attorney may effectively use the so-called "Golden Rule" argument. He simply argues to the jury to put themselves in the position of the defendant.

In a case where a truck driver is joined as a defendant with a trucking company, the defense attorney may request the jury to put themselves in the position of the truck driver. He is free from fault, but a verdict for the plaintiff will cause a blot on his record. It will stamp him as a law violator. The defense attorney may say to the jury, "Put yourself in the position of this truck driver. If you were in his place, would you want to be convicted as a law violator when the accident was not your fault?"

In a recent case, the parents sought recovery for the death of an 18 month old baby. The defendant was backing out of the driveway of his own home and struck the child. The child had slipped away from its home and toddled out on the driveway. The defendant did not know of the presence of the child until after it was struck. In arguing the case to the jury, the plaintiff told the jury to place themselves in the position of the parents who had lost their infant daughter. The rebuttal argument of the defense attorney was in substance as follows:

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[26]*Matthew* 7:12. See also Luke 6:31 "And as ye would that men should do to you, do ye also to them likewise."

[27]53 Am. Jur. *Trial* § 496 (1945).

[28]Copiah Dairies, Inc. v. Addkison, 247 Miss. 327, 153 So. 2d 689, 694 (1963).

[29]Magid v. Mozo, 135 So. 2d 772, 773 (Fla. Dist. Ct. App. 1961).

[30]Klotz v. Sears, Roebuck & Co., 267 F.2d 53, 54 (7th Cir.), *cert. denied*, 361 U.S. 877 (1959).

Yes, members of the jury, put yourself in the position of all the parties. Let us first consider the position of the mother. We are naturally very sympathetic with her because she has lost her baby, but really it was her fault that this little baby strayed away from the family home and toddled out on the driveway. Put yourselves in the position of the defendant. He did not know the mother would carelessly permit her child to toddle out on the driveway. He did not know the little baby was behind his car. He was not at fault. Assume this situation should occur to you. Assume you were backing out of your own driveway and your neighbor had permitted her child to toddle out on the driveway. You did not know the child was behind your car. You struck it. You would feel awfully bad about the unfortunate accident. You would certainly grieve with the parents over the loss of the child; but you would not feel you owed the parents a large sum of money simply because by their own neglect the death of the child had occurred. Yes, put yourself in the position of the defendant. I do not believe you would feel that you were liable to the parents for the death of their child.

The jury returned a prompt verdict in favor of the defendant.

VII. Demonstrative Evidence

Jurors, like impatient women, get sick of "words, words, words." They like to be shown. Demonstrative evidence skillfully used is the best method of showing the jury.

In recent years there has been an epidemic of what is known as "demonstrative evidence" used in the trial of jury cases. It is not unusual in the trial of negligence actions for attorneys to use colored photographs, skeletons, and intricate models. Sometimes a lawyer feels like the dog surrounded by four trees, not a leg to stand on.

One of the most important problems in the use of demonstrative evidence is for the attorney to make certain the jury understands the thought he intends to convey.

The most dramatic example of the use of demonstrative evidence coming to my attention occurred at a court martial trial during World War II. Paul C. Duncan, an Oklahoma City attorney, then a captain in the United States Army, was asked to defend an infantry captain charged with "Disobedience of a Lawful Order During Time of War." Specifically, the captain had refused to send men under his command, armed with shovels and buckets of sand, into a burning Japanese supply area located on a landing beach for the purpose of attempting to extinguish fires. Fire hoses from landing ships and bulldozer operations had already failed. The captain offered to enter the area personally, but pointed out that the dump was full of live ammunition, some of which had already exploded. In defending the captain as defense

counsel, Captain Duncan introduced in evidence a live 500-pound Japanese bomb which he had pulled from the dump. When the bomb was wheeled into court, there was a quick recess of the court martial and a subsequent acquittal of the infantry captain. Within two weeks this same infantry captain was decorated for bravery at Biak and promoted to major.

I am of the fixed opinion that simple experiments made in the courtroom in the presence of the jury are far more effective than the use of elaborate models. For example, in the trial of a case a few years ago, it was contended that the braking assembly on a motor vehicle had been put together improperly. It was contended that the brake shoes had been placed in the braking drum backward, causing the braking mechanism to operate improperly. During the trial of the case, a mechanic garbed in clean but faded coveralls took the braking mechanism apart and reassembled it in the presence of the jury. He demonstrated to the jury that it was impossible to insert the brake shoes in the mechanism backwards. An honest farmer was sitting in the front row of the jury box. He leaned over and watched the experiment with intense interest. Finally his interest exploded. He exclaimed, "Well, the damn thing is foolproof, ain't it?" This simple experiment, made by a mechanic understanding braking mechanism, brought about the desired results.

In another case in which I recently appeared as counsel, the General Electric Company was charged with the faulty assembly of the wiring of a Hotpoint electric range, causing a short circuit and a damaging fire. A Hotpoint electric range was moved into the courtroom. An expert, familiar with the wiring element, explained the construction of the wiring to the jury. The wiring expert not only sold the jury on the fact that the heating unit was assembled properly but also sold a majority of the jury Hotpoint electric ranges.

I have never been able to understand why it is necessary to display the entire skeleton of the human body to the jury when the injury may consist of a broken toe or a broken finger. Still, there are some courts which permit such a display. I have always doubted its psychological effect on the jury. Sometimes juries resent such tactics.

One attorney during the closing argument in the trial of a case where a number of skulls had been exhibited to the jury turned the tide by picking up an old skull which happened to be handy and, gazing intently into the face of the skull, delivered Hamlet's famous 'Alas, poor Yorick' speech from the 'Gravediggers Scene' in Shakespeare's *Hamlet*.

It is reported that a certain well known damage suit lawyer practicing on the Pacific Coast never got out from under the spell of the defense attorney's speech and lost his case.

VIII. Blackboards

The practice of using blackboards for demonstrative purposes during the oral argument in negligence cases has become quite prevalent throughout the nation.

The attorney for the plaintiff in many cases will use several blackboards. On one he will write a summary of his opening statement; on the second he will jot down the important portions of the testimony of his witnesses. On the third blackboard, he will write astronomical figures portraying his conception of the amount of damages which should be awarded. The rule is fundamental that blackboards may be used to explain the facts to the jury, but not to mislead or prejudice the jury.[21]

An effective method available to the defense attorney for counteracting the use of blackboards by counsel for the plaintiff is for the defense attorney to wait patiently until after the attorney for the plaintiff has completed his argument. He can then walk to the blackboard, pick up an eraser and erase all the figures. He can write on the blackboard a large '0' and tell the jury this is the amount to which the plaintiff is entitled. Turning to the other blackboards, he can apply the eraser and then write down the important portions of testimony of defense witnesses and the reasons why the plaintiff should not recover. The attorney for the plaintiff will quite likely become irritated with this turn of events but there is nothing he can do about it. He wrote his version of the trial on the blackboard and the defense attorney is entitled to write his version. Quite frequently the attorney for the plaintiff in his final argument attempts to reconstruct the figures on the blackboard and rewrite the points of evidence which he had previously placed on the blackboards. If he attempts to do this, he is consuming valuable time. In any event, he has been thrown off his stride and his smooth running machine has been snarled.

Most courtrooms are equipped with blackboards for use by counsel on either side of the case. If the blackboards are a part of the court room equipment, the attorney for the plaintiff has no right to object to their use by the defense attorney. In many cases the attorney for the plaintiff brings his own blackboards to the court room in which event it is the courteous thing to do for the defense attorney to secure his permission in using them. He may politely and with dignity, in the presence of the jury, ask the attorney for the plaintiff if he may borrow his blackboards for the purpose of making a little demonstration. The attorney for the plaintiff is placed in a bad dilemma. If he refuses permission the jury may secure the impression he is unfair. If he agrees, he loses one act of the show.

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[21]Faught v. Washam, *supra* note 24.

Sometimes the attorney for the plaintiff uses charts instead of blackboards. The figures are written on a chart with the use of a soft pencil. It is a good plan for the defense attorney to bring his own blackboards or own charts to the courthouse. He can take the blackboards and the charts of the plaintiff down from the easel and place his own display in front of the jury. Or better still, he can place his charts or blackboards on top of the plaintiff's and leave them there. Of course, counsel for the plaintiff in his rebuttal argument will remove the defendant's exhibits and return his own to the easels. This will cause the trial to become a game of shifting charts and blackboards, all of which is to the advantage of the defendant.[32]

If the plaintiff does not use blackboards or charts in the trial of a case it is probably best for the defense attorney not to instigate their use. The jury might reach the conclusion that the defense is over-trying the case. If the attorney for the plaintiff injects the use of blackboards into the trial the defense attorney may then turn the tables and use the exhibits most effectively in the defense of the case.

IX. Courtroom Conduct

The conduct of the defense attorney in the courtroom frequently is reflected in the size of the verdict. It is not meant to convey the impression that the conduct of defense attorneys in the courtroom is at any time improper; but if the defense attorney irritates the jury, they, being human, will turn against the attorney and return a higher verdict.

An outstanding plaintiff lawyer once said: "I can never get a high verdict against him (referring to a certain defense attorney). He keeps all the fire out of a lawsuit." If the defense attorney keeps the fire out of a lawsuit, the jury may return a verdict against his claimant, but it will be for a reasonable amount.

The defense attorney must at all times endeavor to convince the jury that he needs their help. Juries will reach out instinctively to help an attorney if they feel he is conducting himself properly and is doing the best job he can to present the issues quietly and fairly.

The defense attorney must not be too tense; he must relax. Many plaintiffs' attorneys comment that the reason they secure high verdicts is that the defense attorney is wound up like a top, is too tense, too stern, too dignified, and takes his job too seriously.

There is an old adage, "whom the Gods destroy they first make mad." One writer, paraphrasing the third beatitude says, "Blessed is

[32]See Pierson, *Combating the Use of Demonstrative Evidence,* 1956 Proceedings of Section of Ins. Law, A.B.A. 430, 437-39 (1956); Pierson, *The Hot Side of the Table,* 24 Tenn. L. Rev. 199, 202-04 (1956).

the man who is always angry at the right time and never angry at the wrong time." It is seldom beneficial for a lawyer to be angry at any time. It is proper for him to be firm, but there is a vast difference between firmness and anger. It is an old trick of plaintiffs' attorneys to needle the defense attorney. The defense attorney may become irritated or even disgusted, but he will serve his clients best if he keeps his feelings under control and remembers the admonition, "a soft answer turneth away wrath." The average jury is composed of kind, considerate people. They dislike any display of anger. This does not mean that a lawyer should be timid. He should be firm and courageously assert his position in a lawsuit. But he can be firm and also polite.

There is a familiar motto frequently displayed on a plaque in business establishments: "Courtesy is Contagious." Courtesy on the part of a lawyer is contagious; it rubs off on the jury. An attorney should be courteous to everyone in the courtroom—the judge, the court officials, and also the opposing attorney—although he must at all times bear in mind that "a common law trial is and always should be an adversary proceeding."[33] He should be polite towards the lawyer on the other side of the lawsuit, but never obsequious.

As has been previously stated, almost all tort actions involve an element of sympathy. In a death case, the widow may shed good honest tears while she is testifying. The defense attorney should recognize this natural display of sorrow on the part of the widow. Most emphatically he should not consider the incident as an unnecessary display of emotion on the part of the widow calculated to inflame the minds of the jurors. There should be no more sympathetic person towards the widow in the courtroom than the defense attorney. If she cries while she is testifying, the defense attorney should be the first to suggest to the court that a recess be declared until she regains her composure. If the widow has testified to little of a damaging nature, he can save his clients money by politely saying, "Under the circumstances, I will not cause this lady additional discomfort. I waive cross examination." The defense attorney hurts his case by subjecting the widow to a vigorous cross examination relating to the meagerness of her husband's income or other matters of a personal nature.

The defense attorneys securing the lowest verdicts in negligence actions are generally those who make the fewest objections during the trial. Technical objections to the evidence should be avoided. Juries are generally anxious to learn all they can about the transaction involved in the lawsuit. Their reaction may be that the attorney is attempting to conceal something from them. The attorney may have secured a temporary victory by having the objection sustained, but it bears no fruit. The reaction of the jury is quite likely to be during their delibera-

[33]Hickman v. Taylor, *supra* note 3.

tions: "Well, this guy thought he was plenty smart in keeping something from us, but we will take care of him."

In speaking to the jury, it is always best for the attorney to use simple words the jurors will understand. Jurors are not "bookish individuals" and understand simple words better than legal terms. For example, a majority of the average jury may not understand such legal terms as "negligence" or "preponderance of the evidence," but they will thoroughly understand the simple words having the same meaning, such as "fault" or the "better evidence." An attorney must never attempt to talk down to the jury. They will quite properly resent it. But he can talk their language and in most instances will secure better results by doing so.

X. Argument

It would be most presumptuous for an Oklahoma lawyer to attempt to tell Mississippi lawyers the proper method to be employed in arguing cases to Mississippi juries. As this discussion has progressed, I have attempted to offer a few suggestions. A few more may be helpful.

The attorney for the plaintiff has a decided advantage in being permitted to both open and close the argument to the jury. "The practice has grown up for counsel for the plaintiff to reserve the greater portion of his argument for his closing speech."[34] The defense attorney is placed in a dilemma.

The solution of the problem depends principally on the circumstances presented in each particular case and the intuition of the trial attorney.

One of the most valuable assets of a trial attorney is his own intuition. Intuition is difficult to define, but as related to trials, may be described as the "feel of the case." As the trial progresses, the experienced attorney begins to have a feeling of whether the case is going for or against his client. This feeling is often brought about by carefully observing the facial expressions of the jurors, their reaction to the evidence, and their apparent reaction to the conduct of the attorneys.

Attorneys will, of course, be incorrect sometimes in their prejudging of juries, but experience teaches that in a large percentage of trials, the attorney's early prediction is correct. If the attorney feels that the case is in good shape and the jury is with him, it is best not to attempt to anticipate the matters the opposing attorney is likely to discuss in his closing address.

Another important factor in determining the problem is the personality, characteristics and traits of the opposing attorney.

Active plaintiff attorneys and defense attorneys are generally well

[34] 53 Am. Jur. *Trial* § 462 (1945).

acquainted. They have learned from experience each others tricks. Major personal injury cases in almost any area have a tendency to gravitate into the offices of a few outstanding plaintiffs' lawyers. Likewise, the major portion of defense litigation in a given area is generally handled by a few experienced defense attorneys. No reflection is intended on either group of attorneys. Litigants needing a lawyer generally employ the best lawyer they can find practicing in the field of law involved. After the opposing attorneys have tried a number of cases on opposite sides, they each learn the type of closing argument the other will make.

The author recalls a plaintiff's attorney active in the practice a number of years ago. In cases involving injuries to the head, this particular plaintiff's attorney would make clever use of his watch in his closing argument. He would tell the jury that he could throw the watch on the floor and smash it all to pieces and then take it to the jeweler and have it completely repaired. With a quiver in his voice he would say, "This is not true with the human brain. One smash on the head may destroy the mental ability of this man forever. It cannot be repaired." The only way to beat this lawyer was for the defense attorney to tell the story first, giving the plaintiff's attorney credit for it. Sometimes the plaintiff's attorney would abandon further telling of the story. Other times he would retell it, but it was not so effective.

Quite a few plaintiff's attorneys follow the practice of devoting the major partion of their allotted time to their opening argument. In the federal court and most state jurisdictions pre-trial procedure is authorized and the extent of jury arguments may be discussed at a pre-trial conference. For example, the defense attorney may require the attorney for the plaintiff to state if he intends to discuss the measure of damages by using charts or writing figures on the blackboard. If the attorney for the plaintiff states that he intends to employ such procedure, the attorney for the defendant may request the court to instruct the attorney for the plaintiff that such tactics must be discussed in his opening argument. After the pre-trial conference, the defense attorney will be in a much better position to determine with some accuracy the tactics the plaintiff's attorney intends to employ in his closing argument. He is then in a position to discuss these tactics in his own argument. If he knows in advance the attorney for the plaintiff is going to discuss at length the measure of damages in his closing argument, he may in his own argument say to the jury: "Now the attorney for the plaintiff will make his closing speech. I will have no opportunity to answer him. Don't let him mislead you by putting on a blackboard a bunch of figures telling you the amount of damages to return. You use your own common sense in this matter."

Attempts to anticipate the content of the closing argument of the plaintiff's attorney are fraught with danger and should be used sparingly. In most cases, it is best for the defense attorney to argue vigorously his own case. If his argument is convincing and logical, the jury, in most cases, will be inclined to follow it and disregard the closing speech of the plaintiff's attorney.

The defense attorney may wisely point out to the jury the unfairness of plaintiff's attorney in declining to discuss the real issues in the case in his opening address, affording the attorney no opportunity to reply. He should advise the jury that plaintiff's attorney may discuss new matters which he will have no opportunity to answer, but that he is certain the jury will remember the evidence.

The defense attorney may throw out a little "bait" for his opponent. He may vigorously challenge some statements made by his opponent or his conduct relating to minor issues. If his opponent takes the "bait" he may spend the major portion of his closing argument explaining inconsequential issues, leaving little time to discuss the more important phases of the case.

In the trial of a certain case, a plaintiff failed to call as a witness a surgeon who had treated him for a neck injury. The doctor, a gray haired, dignified, distinguished looking individual, made an excellent witness for the defense. During his opening argument, the attorney for the plaintiff referred to the fine, elderly doctor as a "snake-in-the-grass." In his argument, the defense attorney commented: "The attorney for the plaintiff has called this fine, elderly gray haired doctor, who has trained almost all the orthopedic surgeons in this community, a 'snake-in-the-grass.' How reprehensible! Will not my enthusiastic, youthful opponent take time in his closing argument to apologize for calling this deeply respected gentleman a 'snake-in-the-grass.'" In his closing argument, the attorney for the plaintiff spent almost all his allotted time apologizing, leaving little time to discuss the real issues in his case.

The defense attorney must never "lead with his chin." Keep the fire out of a lawsuit and don't give your opponent anything to sink his teeth into for use in his closing argument.

There is a story of a trial which occurred down in Little Dixie in the State of Oklahoma. Little Dixie is a tier of counties along the Red River in the southern portion of Oklahoma. Some Oklahoma citizens call it "Lapland" where culture and civilization from Oklahoma laps over into Texas. The case was being tried in one of the rural communities of the state and involved the proverbial story of a railroad train striking a cow. The evidence had been concluded. The attorney for the railroad was one of the distinguished and great scholars of the state. After the attorney for the plaintiff had made a few remarks, the railroad attorney arose to his feet and said to the jury, "This is a simple

case. It is just a plain case of Damnum Absque Injuria". You know, I am somewhat like that young country lawyer. Latin was not my best subject while in school. About all the Latin I can recall is the first line of Caesar's "Gallic Wars", which reads "Gallia Est Omnis Divisa In Partes Tres" which translated means, "All Gaul is divided into three parts." I was interested but was never able to discover where those three parts went until I became acquainted with certain lawyers. Now I know where all three parts of Gaul went. But I want to get back to our young country lawyer. After the railroad lawyer had expounded the phrase "Damnum Absque Injuria" to the jury, the young lawyer commenced his closing argument. He said to the jury, "I am not skilled in the classics. I understand the distinguished railroad attorney knows a great number of languages. He translates from the Latin into English and English into Latin. He has conversational knowledge of many languages. I do not know very much Latin. As a schoolboy I attended Wapanucka High School where I studied Latin I. I will translate the phrase 'Damnum Absque Injuria.' 'Damnum Absque Injuria' translated from the Latin into English means that, 'It is a damn poor railroad which will kill a cow and won't pay for it.'" He needed to say nothing further—he won his case.

Be careful not to lead with your chin. It is generally not wise to needle your opponent. References to politics are to be avoided. In the State of Arkansas, the court has held that referring to the opposing counsel as being a prominent Republican constitutes reversible error.[35]

The attorney for the plaintiff generally pitches his argument on money, not small amounts but large sums running into six digits, for example, $300,000. The defense attorney may effectively counter-act this type of argument by also talking about money. Talking about it realistically from the standpoint of its purchasing power. He may say:

> How much is $300,000? It is more than I have, or ever expect to have. I expect it is more than any member of this jury possesses. I suspect it is more than his honor on the bench possesses. Do you want to make this plaintiff rich at your expense and after all, you citizens bear the brunt of unjust verdicts. It is the people who pay for miscarriages of justice and if you return an unjust verdict for a large amount of money, you will indirectly pay the bill yourselves when you pay for the things you need in ordinary life. Unjust verdicts make it necessary for you to pay more for protection, pay more in railroad fares, bus fares and plane fares when you travel; even pay more for the groceries you buy at the grocery store, and the clothing you wear on your back.
>
> How much is $300,000? How unreasonable can people get? Building and loan stock is considered a sound and conservative investment. The current dividend rate to the shareholder is 4%

[35]Missouri Pac. R.R. v. Glidewell, 199 Ark. 1187, 137 S.W.2d 237 (1940).

annually. $300,000 invested in building and loan stock would earn this plaintiff a life income in excess of one thousand dollars per month and leave the principal intact for his relatives to fuss over after his death. Now the evidence establishes that at the time of the accident this man was earning $495 per month. How unreasonable can we get? This man wants you to make him rich and give him a life income of twice the amount he was earning at the time he was injured. Such exaggerated claims are a threat to the economy of this nation and I do not believe you will help him do this injustice.

How much is $300,000? It would furnish the plaintiff enough to buy thirty Cadillac automobiles and have enough left for a world tour or two. There are probably several of you on the jury who do not own Cadillacs and are quite content to drive a lower priced car. Do you want to give this man 30 Cadillacs?

I am not a real estate agent, but I have been told that you can buy 160 acres of fairly good farm land in this community for $20,000. Now some of you being farmers know more about this subject than I do, but if my figures are correct, $300,000 would furnish the plaintiff with enough money to buy 15—160 acre farms. I suspect that some of you farmers are fairly well content to own one or two 160-acre tracts. Do you want to make this man the richest farmer in the whole county and put him in a place where he can own 15 times as much land as you do? Let us be reasonable.

Some of you jurors are ranchers and certainly are more familiar with the cost of developing a livestock herd than I am. I am advised that the cost per head of livestock necessary for developing a large herd varies considerably. In any event, I believe it is safe to say that by careful use the sum of $300,000 would be sufficient for a rancher to develop a herd of approximately 1500 head. Fifteen hundred head of cattle is quite a spread. Do you want to set this man up in the livestock business? You ranchers have developed your herds by the hard way. Do you want to hand this man on a silver platter the price of a livestock herd larger than you own and spent years in developing?

Many other examples will suggest themselves to the defense attorney. If an argument of this character is to be undertaken then the defense attorney should familiarize himself with the items which will be of the greatest interest to the jurors in a particular community. He should also ascertain definitely the market prices of these items. It would be dangerous for the attorney to make an argument of this character without knowing the value of farms or personal property in the particular community.

The defense attorney is confronted with many cases wherein the plaintiff has sustained permanent disability, but is not entirely incapacitated. For example, the plaintiff may have lost a leg, an arm or even both legs. These are the type of cases where counsel for the

plaintiff are prone to insist on the jury returning a verdict in favor of the plaintiff for many thousands of dollars.

The attorney confronted with cases of this character may logically argue the ability of an incapacitated person to rehabilitate himself. In almost any community there will be people who have unfortunately lost a member of the body or have become physically incapacitated to some degree but are not despondent and adjust themselves to their disability and lead fruitful lives.

An attorney in his argument may refer to the number of distinguished Americans who have reached the pinnacle of success in spite of handicaps. For instance, Franklin D. Roosevelt almost unable to walk became President of the United States; Helen Keller, deaf, dumb, and blind, lived a fruitful life. Beethoven, deaf, composed some of the world's finest music. Many other examples may be cited. The significant point is that the mere fact the individual is partially disabled or has some impairment does not mean that he is helpless and entirely incapacitated.

In a certain case a young boy in an industrial accident lost a leg. His attorney during the argument painted a pitiful picture of his being unable to participate in sports or to do other things which young boys are accustomed to doing. The defense attorney made an excellent rebuttal argument. He said in substance:

> The evidence discloses that the plaintiff is a fine studious young man. He was compelled to forego a higher education because of the lack of finances. His schooling was completed with his high school education. Now the attorney for the plaintiff insists that you award this young man $300,000 for the loss of a leg. I do not believe the defendant was at fault in this case but this is a question for you to determine and if you determine that the plaintiff is entitled to recover some sum of money let us consider the amount of money which if handled carefully, and I am sure this young man would handle it carefully, would do him the most good. Suppose we send this young man to college. He could live comfortably while attending college on approximately $3,000 per year. This would mean that $12,000 would provide him with a college degree and put him in a better position to earn a living than he was at the time of the accident. Possibly this young man would prefer to go to a private college instead of our very fine state university. This would be his privilege and it probably would require an additional $1,500 each year for tuition and incidentals. If the young man chose to go to a private school four years, a college education would, therefore, cost around $18,000. The point I am making is that if you were to award this young man a sufficient amount of money to secure a college education, you would be putting him in a better position to earn a living the balance of his life than he was in at the time he lost his leg. Let us be fair and reasonable.

Defense attorneys should attempt to impress upon the jury the importance of their making use of their reasoning faculties. He may make excellent use of a quotation from the Bible where the Lord speaking to the people through the prophet Isaiah, said, "Come now, and let us reason together."[36]

XI. Conclusion

Naturally, lawyers can always have more hindsight than foresight. Trying as hard as we can, we will make some mistakes. I am reminded of the story of the young sailor during World War II. He had been away from home for several months before his parents finally received a letter. The young sailor said in the letter that he could not tell his folks where he was located but that he had shot a polar bear. His parents readily deducted that he was in the Arctic Region. A few months later they received a second letter. Again the young sailor stated that he could not tell his parents his location but that he had danced with a Hula girl. His parents logically deducted that he was in the Hawaiian Islands. The next letter came more promptly. In about two weeks his parents received a letter. The young sailor said, "Now, don't get excited, I can tell you where I am. I am in the hospital. I cannot tell you what is wrong but from what the doctors tell me I would have been in better shape if I had danced with the Polar Bear and shot the Hula girl."

It is wonderful to be with you; Mrs. Pierson and I are enjoying our visit. As you slide down the bannister of life, remember me as a sliver in your career.

SECOND GENERAL ASSEMBLY

Saturday, June 20, 9:30 a.m.

The meeting was called to order by President Currie. Mr. Robert G. Gillespie, Associate Justice of the Supreme Court of Mississippi, then introduced Mr. Joshua M. Morse, III, Dean of the Law School, University of Mississippi, who delivered the following address:

ADDRESS OF JOSHUA M. MORSE, III

I think it would be rather presumptuous of me to try to make a report on the Law School since I have only been back at the Law School and on duty for about a week. However, I would like to tell you something of the plans that I have and what progress we have made since my appointment as Dean, not through my efforts but through the efforts of the other members of the faculty over the past year.

As all of you know, in the last thirty or forty years there has been

[36]Isaiah 1:18.

a tremendous increase in the complexity of legal problems. When my father started practicing, the Mississippi Code was in one volume, now it's fifteen. The administrative agencies that were thought to be necessary to control business organizations and other things have brought in administrative regulations that were unheard of around the turn of the century, and today these regulations alone would more than fill the law library of a lawyer at the turn of the century. These things have had their impact on the law schools.

In 1900 there were probably not over ten basic courses that were the foundation of the entire law school curriculum. Today our catalog and practically every other one in the country lists at least seventy or eighty courses that are taught and thought to be necessary, and these only survey the field generally.

To meet this need it takes faculty, and it takes library and these things cost money. The legislature has, I think, been generous to the institutions of higher learning. The funds, however, to these institutions are allocated to the universities on a formula basis. I don't want to go into the details except to state that because of the trouble we have had, the University has found it necessary to curtail that portion of the money that would have gone to the Law School in order to maintain the rest of the facilities of the University. I am in accord with that because I don't think a law school can be maintained in a vacuum. I think the state universities are necessary to the Law School, because this is *the* Law School of the State of Mississippi and not just the Law School of the University of Mississippi. So I am not fighting that battle except in the future. I don't want this to be a habit. We this year would have received, because of formula allocation, enough money to have done an excellent job at the University of Mississippi. As it is, we will be able to do a competent job if we get the continued support of the Bar of this state.

We have generally three areas in which the Law School can be of service to the people of this state. The first, of course, is in educating the students who come to us so that they become competent scholars. The difference between the Law School now and in the early 1920's and early 1900's and even early 1930's is that only approximately half of our students go into the practice of law. The rest go into corporate counsel, house counsel, government service, politics and other areas where the traditional basic trial lawyer legal education is not adequate and it is not sufficient, and in these areas we need additional help. We need to increase our curriculum to train these people because this is really the area where all of our battles are now being fought.

In the area of legal philosophy we have great deficiency insofar as having any philosophical basis on which to support the legal rules that we try to urge in support of our position in this country today.

These areas are hardly touched upon at the Law School today, and we need competent people to teach the position that we are trying to put forward.

In the area of legal specialty, e.g. taxation, labor law, and similar fields, we need competent people to serve as teachers. These particular specialties are essential today to the continued growth of this state, and we need people to do this who have practiced in, and are competent in, these areas. To get these people takes money. To get them part-time, it costs as much as we now pay an ordinary faculty member. I am going to have to call upon the Bar to help us during this period of transition, and I have talked to some eight or ten members of this Bar with the idea of getting them to come to the University as lecturers during the next year. I have as yet to have a single one refuse. They are coming at their own expense because they realize that at the present time we don't have the funds available to do the job that we need to do.

The next area in which we can be of service, I think, is in the area of legal education, and in this area the Bar Association has been particularly generous. John Fox, who was Acting-Dean in my absence, and the State Bar Association have entered into an agreement whereby the Bar Association and the University are to furnish to the Bar a Director of Continuing Legal Education, who will be officed and staffed at the University, and whose expenses are to be borne jointly by the Bar Association and the University. We hope that through this Director of Continuing Legal Education we can bring the specialists that in time we hope to have, and we hope that other areas of future continuing legal education can be brought forward as a continued service to the Bar of this state on behalf of the state Law School.

The third area in which we can be of service, and in this particular area I think the state Law School can be of greater service to the State of Mississippi than in any other, is in the area of legal research. Some ten or twelve years ago I served as Chairman of the Committee of the State Bar whose purpose was to research and recommend to the Bar the formation of a Mississippi Law Research Institute. The recommendation which we made was to form a Mississippi Law Research Institute which was modeled upon the one then in effect in the State of Louisiana. That recommendation was adopted by the Bar and was authorized by the Board of Trustees of Institutions of Higher Learning, but was never given life. This year we have received a charter. In my absence I asked Parham Williams to prepare and get a charter in line with these recommendations, which he did. I conferred with President Currie and with our new President, Earl Thomas, with a view toward going forward and appointing the people necessary to actuate this Institute for the coming year.

The purpose of the Mississippi Law Research Institute, as stated in its charter, is to promote and encourage the clarification and simplification of law of Mississippi and its better adaptation to present social needs, to secure the better administration of justice in the science of government, and to carry on scholarly research and scientific legal work.

An example of the work that this type institute does might help. In Louisiana this institute has compiled and codified all of the Louisiana Statutes, Annotated, the thing that we call the Code. This is done in a number of volumes and it has, I might add, an adequate index. In addition to this they have translated in Louisiana—something that we would not have to do—a number of learned treatises from the French and other languages to aid them in their civil law. In addition, they have codified and clarified the probate code, substantive as well as procedural, the criminal code, substantive as well as procedural, and the civil code, substantive as well as procedural. These particular projects were done at the request of, and only at the request of the legislature. In doing this the Institute did not enter into any areas of controversy, nor did they seek to impose their own views upon the Bar or the people of the State of Louisiana, but rather their sole purpose was to codify and clarify the law in order that its simplification might aid in the administration of justice. In this area I think that the Law School with its research facilities can be of tremendous help in the economic and industrial growth of the State of Mississippi.

These are the primary and immediate goals that we have in mind. I intended in the next year to put forward a program of development for the Law School that will span some ten years so that we will have a planned program of growth over that period, and so there will not be a haphazard proliferation of subjects and a weakening of our efforts through too much distribution and too little direction.

I know that with your continued help, the Law School of this state will continue to grow and will be recognized as one of the leading law schools of this country.

Mrs. Flora Blount, President of the Mississippi Association of Legal Secretaries, gave a report on that organization's activities.

The special committee on the Southern Reporter was, by action of the convention, continued in office to study the feasibility of publication of a separate Mississippi edition of the Southern Reporter in lieu of the Mississippi Reports. The Resolutions Committee presented a resolution expressing the Bar's appreciation to all persons and organizations which had contributed to the success of the Convention, and a resolution condemning intentional violations of law for the purpose of holding demonstrations and provoking civil unrest.

The Study Committee's report on various proposed amendments

to certain procedural statutes was approved as to Items I-VI; Item VII was continued for further study by the incoming Study Committee.

The next item of business was the election of officers. Mr. Hugh N. Clayton, of New Albany, nominated Mr. Will S. Henley, of Hazlehurst, for the office of Delegate to the American Bar Association; Judge Lester Clark of Hattiesburg seconded the nomination. Mr. Henley was elected by acclamation.

Mr. James Hugh Ray, of Tupelo, nominated Mr. Orma R. Smith, of Corinth, for the office of First Vice-President; Judge Thomas D. Ott, of Hattiesburg, seconded the nomination. Mr. Smith was elected by acclamation.

Mr. Sherman Muths, of Gulfport, nominated Mr. George P. Hewes, III, of Jackson, for the office of Second Vice-President. Mr. Hewes was elected by acclamation.

Mr. Paul G. Alexander, of Jackson, was nominated by Mr. J. A. Travis, Jr., of Jackson, for the office of President of the Conference of Local Bar Associations and was elected by acclamation.

The following Vice-Presidents of the Conference of Local Bar Associations were elected:

Mr. Roy E. Johnson, Senatobia, Northern District
Mr. J. A. Travis, Jr., Jackson, Central District
Mr. W. O. Dillard, Laurel, Southern District

Mr. Earl T. Thomas assumed the Chair. The following Commissioners were elected:

District 1, Robert D. Patterson, Aberdeen
District 2, Albert Sidney Johnston, Jr., Biloxi
District 3, Will A. Hickman, Oxford
District 4, Richard M. Allen, Indianola
District 5, W. A. Strong, Jr., Louisville
District 6, W. A. Geisenberger, Natchez
District 7, Robert R. Dinsmore, Jackson
District 8, James Edwin Smith, Carthage
District 9, George W. Rogers, Jr., Vicksburg
District 10, Russell Wright, Meridian
District 11, Shed Hill Roberson, Clarksdale
District 12, W. Arlington Jones, Hattiesburg
District 13, Willis T. Matthews, Magee
District 14, Breed O. Mounger, Jr., Tylertown
District 15, Vernon H. Broom, Columbia
District 16, Harvey S. Buck, West Point
District 17, Herbert M. Fant, Sardis
District 18, Stewart J. Gilchrist, Laurel
District 19, Edmund A. Wilson, Pascagoula

The Fifty-Ninth Annual Convention of the Mississippi State Bar adjourned *sine die.*

The following is a list of the past presidents of the Mississippi State Bar:

1906—G. H. Shands (deceased)
1906—Murray F. Smith (deceased)
1907—C. H. Alexander (deceased)
1908—J. S. Sexton (deceased)
1909—T. H. Somerville (deceased)
1910—W. H. Powell (deceased)
1911—A. F. Fox (deceased)
1912—R. N. Miller (deceased)
1913—Robert B. Mayes (deceased)
1914—Sydney Smith (deceased)
1915—R. B. Campbell (deceased)
1916—A. T. Stovall (deceased)
1917—A. A. Armistead (deceased)
1918—S. E. Travis (deceased)
1919—J. B. Harris (deceased)
1920—Gabe Jacobson (deceased)
1921—Geo. J. Leftwich (deceased)
1922—J. B. Holden (deceased)
1923—R. H. Thompson (deceased)
1924—Stone Deavours (deceased)
1925—J. N. Flowers (deceased)
1926—D. W. Houston (deceased)
1927—R. E. Wilbourn (deceased)
1928—George W. Currie
1929—T. C. Kimbrough (deceased)
1930—George H. Butler (deceased)
1931—W. W. Venable (deceased)
1932—Jeff Truly (deceased)
1933—J. H. Price (deceased)
1934—W. Calvin Wells (deceased)
1935—Frank E. Everett (deceased)
1936—David E. Crawley (deceased)
1937—Marion W. Reily (deceased)
1938—R. M. Kelly (deceased)
1939—W. H. Watkins (deceased)
1940—W. E. Morse
1941—Alexander Currie (deceased)
1942—Charles F. Engle (deceased)
1943—Ross R. Barnett
1944—Bidwell Adam
1945—Earle L. Wingo (deceased)
1946—R. C. Stovall
1947—Stokes V. Robertson, Sr. (deceased)
1948—Phil Stone
1949—Robert W. Thompson, Jr.
1950—Gibson W. Witherspoon
1951—Quitman Ross
1952—Charles B. Snow (deceased)
1953—Jerome S. Hafter
1954—Robert J. Farley
1955—John C. Satterfield
1956—M. M. Roberts
1957—W. S. Henley
1958—Breed O. Mounger
1959—Hugh N. Clayton
1960—David Cottrell, Jr.
1961—Sherwood W. Wise
1962—C. Sidney Carlton
1963—Edward J. Currie

PROCEEDINGS OF THE TWENTY-EIGHTH
ANNUAL MEETING
OF THE

JUNIOR BAR SECTION

Held at Edgewater Park, Mississippi, June 18, 1964

The General Assembly of the Junior Bar Section was called to order at 1:30 p.m., June 18, 1964, in the Edgewater Gulf Hotel, Edgewater Park, Mississippi, by Mr. George P. Hewes, III, President of the Junior Bar Section.

The invocation was delivered by the Rev. Herbert A. Ward, Jr., of Gulfport.

An address of welcome was delivered by Mr. Sherman Muths, of Gulfport, and was responded to by President Hewes.

Mr. E. C. Ward, of Natchez, then introduced Mr. John C. Weinmann, of New Orleans, Louisiana, Chairman of the Junior Bar Conference of the American Bar Association, who delivered the following address.

ADDRESS OF JOHN C. WEINMANN

It has has been quite an experience to be Chairman of the Junior Bar Conference, both from the standpoint of meeting people from all parts of the world and from the standpoint of getting to know what an outstanding group of young lawyers we have in the United States. In every state that I have been in, the men that I have met and that I have had an opportunity to visit with have truly been outstanding. The future of our country will be in their hands, and I have no doubt as to that future with these men becoming the leaders of the nation.

Of the trips that I have taken, the one that most people have been interested in was the trip I took to Europe as a result of an invitation from the French Junior Bar to address their meeting in Grenoble. My first stop was in London where I had an opportunity to visit the law courts and the Inns of Court. Some of the observations I made while I was there, I think, will be interesting to you. We have all heard the difference between the barrister and the solicitor. It is a very highly organized distinction, the barrister being the trial lawyer and the solicitor being the office lawyer. Socially speaking, the barrister is quite higher than the solicitor, but nonetheless, the solicitors are the ones who make all the money. The barristers don't even discuss fees in most instances. They have a law clerk, generally a man in his fifties, someone who may not have made the grade as a barrister, and the law clerk will set the fees with the solicitor. The barrister doesn't even see the client until about the time of the trial because the solicitor does

all the work and prepares the case. The formality in the English court is tremendous. When they open court about six people walk in, and there is also lots of lace and ruffles, flourishes, stomping of feet, and then the judge walks in. He, of course, is the representative of the Crown and that is why he gets the respect that he does. The addressing of the court in this very formal language is almost ludicrous, because the best lawyers get right to the point and in possibly some two or three minutes will put the issue before the court. The poor lawyers, with this extreme formality, get so involved in their syntax that it is impossible to know what they are talking about. The judges appear very patient, but the formality covered up a great deal of what I thought was just a lot of rubbish.

In France they also have the robes, as do the English, and they have the distinction between the avocat, who is the trial lawyer, the advocate, and the avoué, who is the adviser, and more comparable to the solicitor. Although they do not have quite the formal distinction between them, the advocat does no office work and the avoué on the other hand, would not do any trial work at all.

I attended the Palais de Justice in Paris and sat in on several trials, one of which was in the criminal court. My French lawyer friend, the Chairman of the French Junior Bar got me into the pit, as it were, in this criminal court, and to do so had to put a robe on me, and he introduced me as a visiting lawyer. Nobody knew whether I spoke French or not. It was an arraignment of several Algerians—I guess you would call them "hoodlums"—who had been arrested for armed robbery. I had never seen a group of cut-throats that looked like that in my entire life. As I sat down with the lawyers in the front of the court room there were four gendarmes seated immediately behind me, each with a submachine gun in his lap, and I thought to myself, "If they had need of those submachine guns, what would I do?" Fortunately, they didn't.

One other court I went into in the Palais de Justice was very interesting. It was an appeal court and they had three judges sitting up in the front of the room, all three sound asleep. The lawyer that was arguing the case was an older lawyer and he was reading. Apparently the way they make their appeals is to prepare a brief and then read from it with none of the informal or more informal oral discussions that we would have in one of our appellate courts. I don't blame the judges for sleeping because this man was literally droning on and on.

In Germany I was privileged to meet a young German referendar. A referendar is a young lawyer who is not bridging a gap—he's building a causeway over it, and you have to. There is an enforced, practical program for law school graduates that lasts three and one-half years. They are sworn in as lawyers and are paid $90.00 a month for this

period of time. They get a great deal of practical training, and each will follow the same course, although at different times. They work for lawyers; they try cases under the guidance of the lawyer with whom they are working; they work with judges and law clerks; they work in administrative courts of many different types and at the end of this three and one-half year period there is a great deal of practical experience to which they have been exposed. The criticism that the referendars have is that the program is not a full time job, and as a result, for three and a half years they either work on a master's degree or a Ph.D., in addition to their referendar course, or else they would just have that time free. And if you graduate at age twenty-four, that three and a half years comes at an important time in your lives. I imagine a great many of you here today would be referendars in Germany if you were practicing law there.

They have no organized junior bar in Germany as they do in France and as they do to a certain extent in England. I suspect that the reason they do not have one in Germany is the tremendous respect that they have for their elders. In other words, the young lawyers just won't open their mouths and speak out. Now that is not true in France. The junior bar in France goes up to age forty, and they are very vociferous.

I would like to tell you a word about the Junior Bar Conference at the end of my talk. Before doing that, though, I would want to mention what a French Junior Bar convention is like. It was quite an experience. They don't have cocktail parties because they don't have whiskey. Whiskey is taxed so highly in France that the cost of Bourbon and Scotch is prohibitive. As a result they of course drink wine. They start their social entertainment in the morning about seven-thirty with bus rides and various programs and they don't finish until about twelve o'clock at night. So you really don't have an opportunity to have parties in the room and the type of thing that is so common at our conventions. But they make up for it with champagne luncheons, eight course dinners and that sort of thing, which puts you in a horrible state after about four days, but it was extremely pleasant.

The French Junior Bar is trying very hard to change the distinction between the advocate, the avocat, and the avoué, or the corporate lawyers. They do not have the big firms we have in this country, and the young lawyers are very impressed with the fact that they can give better service if they can band themselves together in law firms.

I do want to say something about the Junior Bar Conference. We have 33,000 members, or more, probably, by now, of thirty-six years of age or younger. Many of you Mississippi lawyers belong to the American Bar Association and are members of the Junior Bar Conference. A number of you over the past few years have been very active

in the Junior Bar Conference. Our "Kingmaker" over here, Mr. Ward, as you have heard, has been very active politically and has done a tremendous amount of work. His efforts on behalf of the Junior Bar Conference have not been entirely political. We have also had B. B. McClendon who is now chairman of our clients security fund, and the work of his committee this year is now being published. It is the "Summary of the Status of Clients Security Fund" and that will be sent to Junior Bar groups all over the country. Many others here in Mississippi have been active over the years.

This year, among our more outstanding projects, has been a survey of starting salaries. We had a Mormon from Salt Lake City who undertook to do this. I don't know whether any of you have ever tried to get information by correspondence—merely by correspondence. Well, this was a survey that meant writing to every major city and many, many smaller cities throughout the country. The only way to do that is to write the letters yourself. I told Keith Taylor that I thought that was the only way he could do it and he said, "Oh, no, I will have regional chairmen and each regional chairman will write so many people and they will write so many people." Obviously it didn't work that way and he found that out very quickly. As a result of his efforts he has answers from 210 cities in every state in the Union and that report is now being published. It shows the starting salaries of young lawyers with firms, with corporations and in the different categories of firms. That is being published and it will be sent to all law schools and to all of the major corporations. The result of this survey will be to increase the starting salaries for young lawyers throughout the country. There is no question that that will be true because major corporations who are in the market for lawyers want good lawyers, and to the best of their ability, they are willing to meet the going rate for starting salaries. The big problem has been that no one has known what the going rate was and this pamphlet I think will serve that one purpose. If we have done nothing else, I think that will be of benefit to the young lawyers of this country.

To those of you who do trial work, we have a medical-legal hand book which sets forth the major categories of medical problems that young lawyers run across and gives a bibliography in each of these areas and that will be available through our Chicago office. It was printed two years ago and was extremely popular. It has been revised to bring it up to date and has these latest medical publications.

For those of you who are active in your state and local junior bars, we have published a project hand book which shows the good ideas that have come out of junior bar groups from all parts of the country.

There are two other things that I would like to go into in detail but I just wouldn't have time. Each one would justify a separate speech. One is that the continuing legal education problem in this country today

is being solved, but there is a great deal of work that needs to be done, and hopefully in the years to come the Junior Bar Conference will play a major role in this by disseminating the information available.

The other area, which I will touch on briefly, is the question of presidential inability. Leon Sarpy, President of our Louisiana Bar Association, was with me in Washington about three weeks ago when the American Bar Association sponsored a program on presidential inability and vice-presidential vacancy. Most of us didn't even think about it when President Johnson took the oath of office as President, but in 1841 when John Tyler succeeded Zachary Taylor there was a great deal of opposition in the press and among legal scholars and politicians to the fact that he took office. The feeling was that he should only be Acting-President. Now that didn't bother John Tyler any. He said, "I am President," and that was the end of it. Of course that has been accepted ever since, but if you wanted to get your books out and write briefs you could very easily prove that, in fact, President Johnson is not the President—he is acting President. Of course that problem has resolved itself by precedent. But the more pressing problem is what happens if you have presidential inability. In other words, what would have happened if John Kennedy had been hit with a bullet and instead of being killed instantly, or virtually instantly, had been left incapacitated or with alternating periods of consciousness and unconsciousness, and when nobody really knew whether he was going to recover or not? We had a situation like that back, I believe, in the 1880's when John Garfield was shot. It took eighty days for him to die. At first his mind was clear, but little by little he lapsed into unconsciousness and eventually, of course, went into a coma. But during that period of time Vice-President Arthur declined to take any action whatsoever as head of the government, and he did so because the opinion of the Attorney General at that time was that if he took over he would oust President Garfield and if Garfield should recover he would no longer be President. That same problem came up when Woodrow Wilson was sick for about six months, and as you recall from reading in your newspapers recently, the story is that Mrs. Wilson, in fact, was running the government. She denies that in her memoirs. She said she made no decisions for the President but she admitted she was the one who would determine which matters he would see. Therefore, the only decisions that were made affirmatively were the ones that she thought the President should look at. During that time I think there were twenty-eight bills that became law as a result of presidential inaction.

Now what if President Kennedy had been in that position? The gossip in Washington at the time that Mr. Sarpy and I were there was that Bobby Kennedy and Lyndon Johnson were very much at odds, so we might have had a situation where the President of the United

States was incapacitated but the Attorney General would have declined to approve Lyndon Johnson's taking over. Lyndon Johnson himself might have been afraid to do so for fear that John Kennedy could not have taken back his job as President.

Now, granted, they had these informal letter agreements, but the constitutionality of those letter agreements is very much subject to question, and what is even worse is that if we have a crisis of that sort, and political bickering, it may be at a very time when the country should stand united and not be subject to the divisions of politics that could come with that type of situation. For this reason the American Bar Association is sponsoring an amendment to the Constitution and you will be hearing a great deal about it. You will also, many of you, be called upon to discuss this in your home communities as part of the work of the Junior Bar Conference.

These are natural questions for young lawyers to discuss and the type area where you can get out in front of your community with something that they really want to hear about. I had the pleasure of speaking to a club in New Orleans on this and after it was over a number of people came up to me and told me it was something they had never really thought about and that they really agreed that it was a problem. People know that this is important, so the American Bar Association wants to have a constitutional amendment which will resolve the problem by having the President able to say to the Vice-President, "I am going to be disabled; I am going to have an operation, and you take over as Acting-President until I recover." Then when the President does recover, in writing again he says, "I am now able and I hereby take back by job as President." If the President happens to be mentally incompetent at the time and the Vice-President knows he's mentally incompetent and the cabinet agrees, then the President can't take back over without Congress approving. So there is a safety valve there to take care of that situation.

Finally, on the question of the filling of the Vice-Presidency, the American Bar is sponsoring an amendment under which a President who has no Vice-President would name a Vice-President and submit that name to Congress for approval by both Houses. That is an area where there is a tremendous amount of political dissent and no one knows, really, what will come of it. Any solution that is practical is a good one and I think the American Bar Association will sponsor it, but this one seems to be the one that is most workable and the one that the ABA is promoting at the present time.

Thank you very much for the opportunity of appearing before you.

Mr. Frank A. Riley, of Tupelo, reported on the activities of the Junior Bar Conference of the American Bar Association.

The Assembly then considered a motion to endorse a proposed change of the name of the Junior Bar Conference of the American Bar Association to the Young Lawyer's Conference. The motion was unanimously rejected.

President Hewes reported on the accomplishments of the past year. The next order of business was the election of officers. The following officers were duly elected:

Sherman Muths, Gulfport, President.
B. B. McClendon, Jr., Jackson, Vice-President.
Executive Committee:
Northern District:
Edward P. Connell, Box 368, Clarksdale—Holdover
Bobby Gerald Perry, Box 121, Horn Lake—1 year
Herbert S. Phillips, Jr., 562 Chulahoma, Holly Springs—2 years
Central District:
William Harold Cox, Jr., Box 1046—1 year (Elected to fill vacancy caused by B. B. McClendon, Jr. being elected Vice-President).
William E. Ready, Box 927, Meridian—1 year
Jay H. Hedgepeth, Box 1467, Jackson—2 years
Southern District:
William S. Mullins, III, Box 2008, Choctaw Station, Laurel—Holdover
Martin T. Smith, Box 94, Poplarville—1 year
Raymond T. Brown, Box 787, Pascagoula—2 years

The last item on the program was a panel discussion on the settlement of law suits. The following attorneys were members of the panel: Dean J. M. Morse, III, University; Mr. J. P. Coleman, Ackerman; Mr. Frank E. Everett, Jr., Vicksburg; Mr. William A. Strong, Jr., Louisville; and Mr. Thomas H. Watkins, Jackson.

The Twenty-Eighth Annual Meeting of the Junior Bar Section was then adjourned *sine die.*

The following is a list of past presidents of the Junior Bar Section of the Mississippi State Bar.

1936—Hugh N. Clayton
1937—Jesse Graham (deceased)
1938—John C. Satterfield
1939—Charles A. Sisson
1940—George M. Ethridge, Jr.
1941—J. Morgan Stevens
1942—Frank Everett, Jr.
1943—Richard E. Stratton, III
1944—Paul Parr (deceased)
1945—John W. Wade
1946—William N. Ethridge, Jr.
1947—James S. Eaton
1948—George Woodliff
1949—W. Arlington Jones
1950—E. Cage Brewer, Jr. (deceased)
1951—Kenneth Franks

1952—Robert G. Nichols, Jr.
1953—Lampkin H. Butts
1954—Josh Morse, III
1955—Charles B. Henley
1956—George Morse
1957—Jack Travis
1958—K. Hayes Callicutt
1959—James F. Noble, Jr.
1960—Eaton A. Lang, Jr.
1961—E. C. Ward
1962—Frank A. Riley
1963—George P. Hewes, III

APPENDIX A

COMMITTEE REPORTS—SENIOR BAR

REPORT OF COMPLAINT COMMITTEE

The Complaint Committee carried over and received a total of approximately 34 complaint letters. Some were the result of misunderstanding of legal procedures by complainants, but most resulted from the attorney's failure to answer inquiries as to status of litigation, particularly collection matters. Only a few of these matters are pending, the others having been disposed of by correspondence.

Eight affidavits of complaint were received. One was withdrawn; one was dismissed for lack of prosecution; one as having no merit; one because the attorney complied with complainant's request with regard to a collection. Two attorneys were disbarred by action instituted by their county bars and no action was taken by this committee other than to cooperate.

Three complaints are pending.

Prompt response to client inquiries and an awareness of the embarrassment that results from this neglect would prevent a large number of complaints. This Committee, therefore, respectfully suggests that an explanation of the disciplinary procedures and main causes for complaints be presented at the Young Lawyers Seminar or to the Law School Seniors.

REPORT OF THE JUSTICE BUILDING COMMITTEE

This committee was assigned the task of studying and making recommendations to the legislators and other proper authorities of the real need of a Department of Justice Building and to urge and cooperate in the introduction of proper legislation for the purchase of a site and the construction of the said building.

The committee has met on several occasions, certain recommendations as to the types of legislation needed have been made by several members of the committee, and finally two bills were introduced at the regular 1964 session.

House Bill Number 93, which is as follows:

> An act to authorize the State Building Commission, or any successor thereto, to erect, when funds are available, or proper financing has been provided, in the City of Jackson, a building to be known as the State Department of Justice Building; and for related purposes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

Section 1. The Mississippi State Building Commission, or any legally constituted successor to such commission, is hereby authorized and directed, when sufficient funds have been made available or some adequate method of financing provided, to erect in the City of Jackson on a site to be selected by said Building Commission, a suitable building, to be known as the State Department of Justice Building. It is the expressed intention of the legislature that said building shall be used primarily for housing the State Supreme Court and Justices' offices, the Department of Justice or Attorney General's office, the offices of the Mississippi State Bar Association, and the State Library, the financing of such a building to be accomplished in any manner as may be authorized by the Legislature.

Section 2. This act shall take effect and be in force from and after its passage.

House Bill Number 98, which is as follows:

An act to create a fund in the State Treasury to be designated as "The Department of Justice Building Fund Escrow Account"; to provide for the levying and collection of fees or assessments from all litigants using the Courts of the State,

from Justices of the Peace Courts up through and including the Supreme Court of the State excluding Municipal Courts; to provide for the payment of such fees or assessments into the said escrow fund in the State Treasury; to provide for the investment of such fund in interest-bearing securities; to provide for the auditing of all Courts to insure proper handling of such fees or assessments collected; and for related purposes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

Section 1. Thereby is hereby created in the State Treasury a fund to be designated as "The Department of Justice Building Escrow Fund."

Section 2. There is hereby assessed a fee of One Dollar ($1.00) as additional Court costs, over and above the normal Court cost presently assessed in each and every Court in the State with the sole exception of Municipal Courts. The fee hereby assessed shall be treated as other Court cost and assessed and collected in the same manner. It shall be the duty of the State Auditor of Public Accounts to notify all Courts required by this act to collect such additional fees of the provisions hereof.

Section 3. The proper Court official of each Court having collected the fee herein assessed shall, on or before August 20, 1964, and on or before the 20th day of each month thereafter, pay all such fees collected into the State Treasury to the credit of "The Department of Justice Building Escrow Fund," said payment to be made in such manner as required by the State Auditor and approved by the State Attorney General.

Section 4. The State Treasurer, with the approval of the Attorney General, may, in his discretion, invest any or all funds accumulated in the Department of Justice Building Escrow Fund in State of Mississippi Bonds or United States Government Bonds or United States Government Short Term Notes, the earnings from which shall be paid into the State Treasury to the credit of the said fund.

Section 5. The State Auditor of Public Accounts of the State of Mississippi shall have an audit made, at intervals convenient to said auditor, of each Court collecting the fee assessed herein to determine that proper accounting has been made.

Section 6. This act shall take effect and be in force from and after July 1, 1964, as to any and all Court cost accrued and paid after such date.

Similar legislation was introduced into the Senate which was referred to the Senate Judiciary Committee. The Committee understands that the Senate is presently considering legislation that will set up a special building fund and revenues received from lands that have been sold by the State during this administration may be deposited to this special fund with the view in mind of these revenues eventually being used for a State Office Building. The committee understands that this building will be designated either as a Judicial Building or the Supreme Court Building of Mississippi.

Senate Bill Number 2134 has been passed and approved by the Governor. This bill is an act authorizing and empowering the State Building Commission to purchase certain lands in the City of Jackson, Mississippi for a total sum not to exceed $1,500,000.00 and to finance the purchase of said lands and related purposes on a temporary basis. The above bill is as follows:

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

Section 1. The State Building Commission as created by Chapter 328, Laws of 1944, as amended, be and is hereby authorized and empowered to purchase in the name of the State of Mississippi the following described parcels of land situated in the City of Jackson, the First Judicial District of Hinds County, Mississippi, to wit:

> Beginning at the intersection of the northern boundary line of High Street with the western boundary line of North President Street and from thence

run in a northernly direction along the western boundary line of North President Street, a distance of 486 feet more or less, to the southern boundary line of George Street, thence run in a westernly direction along the southern boundary line of George Street, a distance of 320 feet more or less, to the eastern boundary line of Congress Street, thence in a southernly direction along the eastern boundary line of Congress Street, a distance of 496.6 feet more or less, to the northern boundary line of High Street, thence in a easternly direction along the northern boundary line of High Street, a distance of 326 feet more or less, to the western boundary line of North President Street, being the point of beginning. Also, that certain plot of land described as beginning at the point of intersection of the northern boundary line of High Street with the western boundary line of North Congress Street, and from thence running in a northernly direction along the western boundary line of North Congress Street, a distance of 495 feet more or less, to the southern boundary line of George Street, thence running in a westernly direction along the southern boundary line of George Street, a distance of 320 feet more or less, to the eastern boundary line of North West Street, thence running in a southernly direction along the eastern boundary line of North West Street, a distance of 489 feet more or less, to the northern boundary line of High Street, thence running in a easternly direction along the northern boundary line of High Street, a distance of 320 feet more or less, to the western boundary line of North Congress Street being the point of beginning.

Section 2. In carrying out the purpose as set out in the Section above, the State Building Commission is hereby authorized and empowered to procure appraisals, abstracts, surveys, and to engage the services of attorneys to the end that the State of Mississippi shall acquire a fee simple title to any part of the above described property. The said Commission is further authorized in its discretion to obtain title insurance on the property so purchased if in the opinion of the said Commission the best interest of the State of Mississippi would be served.

Section 3. In order to obtain the necessary funds for the purchase of all or any part of lands described in Section 1 above and to carry out the provisions of Section 2, the State Building Commission is authorized and empowered in the name of the State of Mississippi to borrow from time to time amounts necessary for the purchase of said property and the perfecting of title thereto provided that the total sum borrowed for said purchase in the aggregate shall not exceed $1,500,000.00. All sums borrowed for the purposes herein set out shall mature not later than the fifteenth day of May, 1966, and shall be evidenced by a promissory note executed by the Chairman and the Secretary of the State Building Commission by and with the authority of the State Building Commission as shown by the minutes of the said Commission. The full faith, credit and taxing power of the State of Mississippi shall be pledged for the payment of said notes herein authorized and on or prior to maturity of said notes, the Legislature shall make further provisions for the payment of said notes together with all interest thereon, which interest shall not exceed 3%. The general obligations herein authorized under the provisions of this act shall have and are hereby declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the State of Mississippi, and said notes and income therefrom shall be exempt from all taxation within the state of Mississippi.

Section 4. In the event that the said State Building Commission is unable to agree with the owner or owners of any parcel of the above described property on the fair market value thereof, the said State Building Commission is hereby granted

the right of condemnation by eminent domain proceeding as provided by law and may use the same for the purpose of acquiring any part or all of said property.

Section 5. When title of any of the above described property shall be vested in the State of Mississippi, the State Building Commission is hereby authorized and empowered to rent said property or any part thereof on a month to month basis until such time as the same may be needed by the State for the construction of state buildings or for such other purposes that the Legislature of the State of Mississippi may designate. The State Building Commission is hereby authorized and empowered to sell the improvements situated on said lands, and all rents collected and proceeds from the sale of improvements thereon shall be paid into a special fund of the State Treasury to be designated as the "State Land Acquisition Fund" and shall be used for the purchase of additional lands or for the payment of the principal and interest on notes herein or as hereafter authorized.

Section 6. The State Treasurer, with the approval of the Attorney General, may, in his discretion, invest any or all funds accumulated in the "State Land Acquisition Fund" in State of Mississippi Bonds or United States Government Bonds or United States Government Short-Term Notes, the earnings from which shall be paid into the State Treasury to the credit of the said fund.

Section 7. This act shall take effect and be in force from and after its passage.

Senate Bill Number 1852, still in the Finance Committee as of May 27, 1964. This bill, is an act making an appropriation to the State Building Commission for the purposes of erecting and equipping a Justice Department Building for the use of the State Supreme Court, Attorney General and staff, State Law Library, and related departments of State Government. This bill is as follows:

WHEREAS, a study committee of the Mississippi State Bar, many trial judges, the Supreme Court, and many members of the Legislature have found the need for the State to construct a Department of Justice Building near the New Capitol Building, for the use of the State Supreme Court, Attorney General and staff, State Law Library, and related departments of state government; and

WHEREAS, the Legislature has long been of the opinion that the offices in the New Capitol Building now utilized by the Judicial Branch and related departments of state government are direly needed for the Lieutenant Governor, Speaker of the House, Legislative Committees, Legislative Drafting Services, and the Executive Branch of the Government, now paying rent in several office buildings in the City of Jackson; NOW, THEREFORE:

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

Section 1. That the following sum, or so much thereof as may be necessary, is hereby appropriated out of any funds in the State Treasury not otherwise appropriated, for the purpose of defraying the expenses of the State Building Commission, created by Chapter 328, Laws of 1944, for the purpose of acquiring the land for and constructing and equipping thereon a Mississippi Department of Justice Building near the present New Capitol Building, for the use of the State Supreme Court, Attorney General and staff, State Law Library, and related departments..... .....$2,000,000.00.

Section 2. The expenditure of the funds appropriated by this act shall be under the direction of the State Building Commission, created by Chapter 328, Laws of 1944, as amended, and shall be paid by the State Treasurer upon warrants issued by the Auditor of Public Accounts, which warrants shall be issued upon requisition signed by the Governor as ex officio chairman of the State Building Commission. All expenditures ordered by the commission shall be entered upon its minutes and the commission shall submit a full report of its work and all transactions carried on

by it, and a complete statement of all expenditures to the next regular session of the Legislature.

Section 3. This act shall take effect and be in force from and after its passage.

The Committee feels that it has made progress toward securing a site for a Department of Justice Building and recommends that an active and continuing committee be authorized to continue this program until the matter is finally concluded.

REPORT OF THE LABOR RELATIONS COMMITTEE

The Labor Relations Committee was appointed on October 1, 1963, by the President of the Mississippi State Bar, and held its initial meeting on November 6, 1963.

During the Bar Year 1962-63 the Labor Relations Committee had produced three seminars, which were held at the University of Mississippi, the University of Southern Mississippi, and Mississippi State University.

After considerable discussion the Committee voted to hold only one seminar during the Bar Year 1963-64, and that it be held in Jackson, Mississippi, for the benefit of Mississippi lawyers and law students, and be confined to the fine technical details and current trends in labor law.

Our Committee was directed by the President of the Mississippi State Bar to work with the Committee on Continuing Legal Education prior to arranging any seminar; and with this directive, we contacted the Chairman of that Committee and asked approval for the production of the labor law seminar as contemplated by the Labor Relations Committee for its 1963-64 program.

The approval of the Committee on Continuing Legal Education was not secured until February, 1964, and it had been our expectation to hold the seminar in Jackson in March, 1964. Therefore, our Committee felt there was not sufficient time in which to arrange for a technical labor law seminar, and decided to forego any activity of this sort, but to recommend to its successor that the seminar, for the use and benefit of Mississippi lawyers and law students only, be undertaken possibly in the month of October, 1964.

The Labor Relations Committee of the Mississippi State Bar makes this report of its activities for the Bar Year 1963-64.

REPORT OF COMMITTEE ON MILITARY LAW AND LEGAL ASSISTANCE FOR SERVICEMEN

The committee on Military Law and Legal Assistance for Servicemen was added to the Mississippi State Bar during the 1962-63 year and the members of the first committee, namely, Honorable Edmund W. Montgomery, II, Chairman; Chancellor William DeB. Neville, Vice-Chairman; Honorable Thomas W. Crockett, Jr., Secretary; Honorable S. E. Allen, Jr., Public Relations Liaison Officer; Chancellor Stokes V. Robertson, Jr.; Judge Lunsford Casey; and Professor Arthur Custy, were reappointed and served for the year 1963-64.

During the year, the main function of the committee in addition to maintaining liaison with the military lawyers in the Armed Forces, was the co-sponsorship of a Seminar on General Government Claims and Federal Procurement Law held at the University of Georgia, at Athens, Georgia on February 6-8, 1964, at the Center for Continuing Education, with seven other southeastern states.

A member of the Mississippi Bar, Professor Roscoe Cross, of the faculty of the University of Mississippi School of Law, was on the program and Judge William

DeB. Neville represented the committee in attendance as well as at a planning meeting held on the 5th of October, 1963.

The committee again reports an excellent relationship between our civilian bar and its military counterpart.

The committee members again recommend that the committee be continued as a regular committee of the Association and communications with other bar associations indicate committees such as ours have now been formed in many other states, and the committee is advised that such committees in other states will be maintained in the bar associations of the various states.

REPORT OF THE RESOLUTIONS COMMITTEE

THE MISSISSIPPI STATE BAR holds these truths to be self evident, viz:

That civilization cannot exist without order, and order cannot be maintained without law.

That government by violence cannot be condoned, and the rule of force cannot be substituted for the rule of law.

That chaos and anarchy will necessarily result if citizens remain free to obey only those laws of their own choosing.

THEREFORE, BE IT RESOLVED:

THAT THIS ASSOCIATION CONDEMNS:

Demonstrations which involve violence or injury to persons or property, and intentional violations of law which are calculated to provoke arrest and to obtain the publicity usually associated with such arrest.

The use, by any individual or group, of tactics involving "lie-downs," "sit-downs" or other such provocative demonstrations, whether on public streets or upon private property, as may lead to violence, bloodshed and breed a disrespect for law and order.

The exportation of agitators, professional or otherwise, by any organization or group, to other communities or states for the deliberate purpose of arousing the people, stirring up strife and hatred among them, and inciting them to violence, riot, and arrest.

BE IT FURTHER RESOLVED:

That this Association firmly believes in the right of any individual who or group which feels aggrieved to freely and peaceably discuss and resolve such grievances, and present them to the public authorities for redress whenever necessary; and, in the event the public authorities do not concur with them, or deny them redress, then, in such event, the right to seek to rectify their alleged wrongs in the courts but not through provocative demonstrations upon private property or in the streets.

Our second resolution is as follows:

WHEREAS, the 59th Annual Convention of the Mississippi State Bar, held at the Edgewater Gulf Hotel, Edgewater Park, Mississippi, June 18-20, 1964, has been one of the most outstanding, profitable, and enjoyable meetings in the history of our Association; and

WHEREAS, the entire membership of the Mississippi State Bar, particularly those attending this Convention, feel deeply and forever indebted to all those who have worked so capably, so efficiently, and with steadfast and tireless devotion, in planning and arranging this Convention;

NOW, THEREFORE, BE IT RESOLVED that the membership of the Mississippi State Bar, in Convention assembled, hereby express our heartfelt appreciation to the following:

Our distinguished President, Honorable Edward J. Currie, for his outstanding leadership, devotion to duty, and memorable manner of presiding over the sessions of this Convention, and to our other officers, Honorable Earl T. Thomas, Honorable Frank A. Riley, and Mrs. Alice Nevels for their valuable services;

Our State Bar Commissioners, the Officers of the Junior Bar Section, Honorable George P. Hewes, III, President, members of the Executive Committee, and of the Conference of Local Bar Associations;

Our Program Committee, Judge Stanton A. Hall, Chairman;

Our Local Arrangements Committee, Hon. David Cottrell, Jr., Chairman;

The Ladies Activities Committee, Mrs. Sherman L. Muths, Jr., Chairman;

The Registration Personnel and Reporters; and

All other Committee Chairmen and members who have served and functioned during the year and at this Convention;

Our featured guest Speakers, Honorable John G. Weinmann, Honorable Francis H. Hare, Honorable Richard W. Galiher, Honorable Perry Nichols, Honorable Welcome D. Pierson, Mr. Edmund H. Harding, Honorable Edward L. Wright, and Honorable Joshua M. Morse, III, for their valuable contributions to our program;

Each of our members who introduced our speakers and accepted other responsibilities related to our program, all of which were performed with distinction;

The Harrison, Hancock and Jackson Counties Legal Secretaries Association for their complimentary secretarial services;

The management, staff and employees of the Edgewater Gulf Hotel for their cooperation in planning and providing for our comfort, convenience, and pleasure;

All our guests whose presence added so much to our Convention and our enjoyment thereof;

And to the members of the Press;

BE IT FURTHER RESOLVED, that our Executive Director, Mrs. Alice Nevels, be requested to forward copies of this Resolution to all appropriate persons and to the Press and that a copy be spread on the permanent records of this Association.

REPORT OF THE STUDY COMMITTEE

The Study Committee of the Mississippi State Bar held two meetings during the year. Several sub-committees were appointed to do research and make a special study of certain subjects. Some of the proposals were studied and rejected. Others were approved or recommended for further study. Drafts of proposed bills which have been approved by the committee are attached hereto and are hereby recommended for approval by the Mississippi State Bar and for submission to the next Legislature by the Legislative Committee of the State Bar.

The bills approved by the Study Committee are as follows:

ITEM I. An act providing discovery procedures in the Chancery, Circuit and County Courts of this state; and to repeal Section 1699 through Section 1709, inclusive, Section 1711 and Section 1712, and Section 1714 through Section 1724, inclusive, Mississippi Code of 1942. (NOTE: This bill was approved by the Mississippi State Bar at its meeting in June, 1963, under Item III of the printed Study Committee report but some further research and study was done by the committee during this year and we think the bill is now perfected and should be re-approved by the State Bar before submitting same to the Legislature.)

ITEM II. An act to amend Section 1883, Mississippi Code of 1942, recompiled, to provide for the issuance of subpoenas duces tecum by Clerks of Court.

ITEM III. An act to amend Section 2796, Mississippi Code of 1942, recompiled, so as to designate the property and indebtedness bound by writs of garnishment and to provide for answer prior to the return date.

ITEM IV. An act to provide when wills and testaments shall be admitted to probate.

ITEM V. An act to amend Chapter 2-A, Mississippi Code of 1942, recompiled, so as to provide that the Chancery Courts of the State of Mississippi shall have jurisdiction to hear and render declaratory judgments as to the validity of marriages in term time or in vacation.

ITEM VI. An act to amend Section 1555, Mississippi Code of 1942, recompiled, so as to provide that a judgment in the Circuit Courts and County Courts in this state shall be a lien upon the property of the Defendant within the county where so enrolled, from the enrollment thereof.

ITEM VII. An act to amend Section 1228, Mississippi Code of 1942, recompiled, so as to allow the Chancellor to try causes, deliver opinions and sign decrees in vacation without the consent of all the parties or their solicitors of record.

A subcommittee was appointed to make a study of the advisability of rewriting the chapter on guardian and ward but the subcommittee did not finish its work on this subject and recommended that it be carried forward for further study by the 1964-1965 Study Committee of the State Bar.

A subcommittee was also appointed to make a study of the advisability of rewriting the family exemption statute but this subcommittee did not finish with its work and recommended that further study be given by the 1964-1965 Study Committee of the State Bar.

Some of the State Bar bills heretofore recommended by the Study Committee and approved by the Mississippi State Bar have been enacted by the 1964 Legislature. Others have been introduced and are still pending.

This committee, therefore, recommends that all of the bills heretofore approved by the Study Committee and by the Mississippi State Bar be resubmitted to the next Legislature for its consideration.

REPORT OF WORKMEN'S COMPENSATION COMMITTEE

Your Workmen's Compensation Committee has met in Jackson during this fiscal year of the Mississippi State Bar and had extended discussions on various problems in the field of Workmen's Compensation law. The Committee feels that we should make certain recommendations to the Mississippi State Bar as follows:

1. That the Mississippi Workmen's Compensation Commission should be empowered by statute to employ six (6) Attorney Referees. This would require the adding of two (2) new referees and would require an amendment to Section 6998-47 of the Mississippi Code of 1942, anno., as amended. This recommendation is made necessary because of the fact that each Attorney Referee has almost double the case load that he should be handling.
2. That the Mississippi Workmen's Compensation Commission be granted authority to hire court reporters and pay them salaries high enough that they can be given some incentive to take the job as court reporter for the Mississippi Workmen's Compensation Commission and make a career of it.
3. That by statute the Mississippi Workmen's Compensation Commission should be required to enter an order on all appeal cases within twenty-one (21) days.

4. That a sub-committee should be appointed within the incoming Workmen's Compensation Committee of the Mississippi State Bar to study suggested procedural changes.
5. That the Commission should be authorized to settle death claims on 9I petitions without the necessity of going to the Circuit Court and settling the death claim there. This can be done by statutory change or judicial clarification.

COMMITTEE REPORTS—JUNIOR BAR SECTION

REPORT OF ADMISSIONS COMMITTEE

The Admissions Committee planned and arranged an admissions ceremony luncheon for the University of Mississippi Law School graduates. Both the February and June Law School graduates were invited to attend an admissions ceremony luncheon in Jackson, Mississippi at noon on June 1, 1964, immediately following the admission of the June class before the Mississippi Supreme Court. Each of the members of the June graduating class were presented and introduced to the Supreme Court by B. B. McClendon, Jr., President of the Jackson Junior Bar Association. Immediately following an address by the Court, the class and other outstanding members of the Bar attended a luncheon in Jackson at which time each of the graduates were duly recognized. The State Junior Bar steering committee for this project was composed of B. B. McClendon, Jr., Edward P. Connell and Professor John H. Fox, Jr. of the University of Mississippi. All planning and arrangements for the admissions ceremony and the luncheon were handled by a committee composed of James E. Rankin, John C. Sullivan, Jr., R. Fulton Thompson, Richard Edmondson and William Champion.

The committee feels that this project is a very worthwhile one and should be firmly established as an annual project rather than being conducted every few years.

REPORT OF THE BYLAWS COMMITTEE

BY-LAWS OF THE JUNIOR BAR SECTION OF THE MISSISSIPPI STATE BAR

ARTICLE I: PURPOSE

Section 1. The purposes of the Junior Bar Section of the Mississippi State Bar are those set out in the resolution of the Mississippi State Bar of September 4, 1936, creating the Junior Bar Section, which resolution is copied in Article III of these By-Laws.

Section 2. These By-Laws are enacted in order to establish permanent regulations for the government of the action of the Junior Bar Section of the Mississippi State Bar and in order to regulate the rights and duties of its members, officers, committees and committee members.

ARTICLE II: AMENDMENTS

These By-Laws may be amended or repealed by a vote of two thirds of the members present and voting at a regular meeting of the membership of the Junior Bar Section. These By-Laws may be amended or repealed so long as such action does not conflict with the resolutions of the Mississippi State Bar which are incorporated herein as Article III.

ARTICLE III: RESOLUTIONS OF THE MISSISSIPPI STATE BAR ESTABLISHING THE JUNIOR BAR SECTION OF THE MISSISSIPPI STATE BAR

On September 4, 1936, the Mississippi State Bar created and established the Junior Bar Section of the Mississippi State Bar, and said resolutions are hereby

adopted and re-written herein and into these By-Laws and made a part hereof, as follows:

"Be it resolved by the Mississippi State Bar in regular convention assembled at Greenville, Mississippi, on this the 4th day of September, 1936:

That, in order to furnish a forum for the younger lawyer, encourage and foster discussion, the interchange of ideas, and constructive action for the preservation and advancement of the ethics, prestige, and integrity of the Bar among the younger lawyers and to establish a special means whereby the younger lawyers may be induced to interest themselves to a greater extent in the activities of the Mississippi State Bar and more materially assist in the accomplishment of its purposes and functions, there is hereby created a standing committee of the Mississippi State Bar to be known as the JUNIOR BAR SECTION of the Mississippi State Bar.

Section 1. The governing body of this Section shall be an Executive Committee composed of eleven members. Two of these members shall be the President and Vice-President, who shall be elected by the Section as a whole. The remaining nine members shall be elected equally from the three Supreme Court districts in the manner set forth in Section 3 hereof.

Section 2. All members in good standing of the Mississippi State Bar who are under thirty-six years of age shall be members of the Section, provided, however, that a member of the Section reaching thirty-six years of age shall continue in membership during the remainder of the fiscal year in which he or she attains said age, and provided, further, that this shall not be construed to remove or separate them in any way from their connection with the State Bar, either during or after their membership in the Junior Bar Section.

Section 3. For the fiscal year 1958-59 six members of the Executive Committee, two from each Supreme Court district, shall be elected for terms of one year each, and three members of said Committee, one from each district, shall be elected for terms of two years each, or, in each case, until their successors have been elected or appointed. For each succeeding fiscal year three members of said Committee, one from each district, shall be elected for terms of one year each, and three members, one from each district, shall be elected for terms of two years each, or, in each case, until their successors have been elected or appointed. The method of election shall be the same as for Bar Commissioners.

Section 4. The Executive Committee may, in any manner it shall direct, provide for the filling of all vacancies for unexpired terms.

Section 5. The Secretary-Treasurer of the Mississippi State Bar shall serve as Secretary-Treasurer of the Section and shall do and perform all things for said Section just as for the State Bar and shall attend such sessions of the Executive Committee unless instructed to the contrary by the President.

Section 6. The Executive Committee shall hold, at least, one meeting each year at a time to be fixed by the President and to be held at the State Capitol not later than 45 days prior to the next annual convention of the State Bar. The President and in his absence of disability, the Vice-President, or any five members of the Committee, may, on not less than 10 days written notice to all members, call special meetings of the Committee to be held at such time and place as may be directed in the notice.

Section 7. The Executive Committee shall have the authority and power:

a. To inquire into, report on, and make recommendations concerning the same and do any and all matters and things it may deem pertinent to and helpful in the carrying out of the purposes of this Section.

b. To do and perform all acts and things necessary and proper to carry out the purposes for which it is created.

c. To exercise such additional powers and functions as may from time to time be delegated to it by the State Bar and by the Commissioners.

d. To appoint sub-committees for the purposes of carrying out its functions and duties from among the membership of this Section and to delegate to such sub-committees all such power and authority as the Executive Committee shall think proper.

Section 8. The expenses of the Section shall be borne by the State Bar to the same extent and in the same manner as are the expenses of the Commissioners.

Section 9. The Executive Committee shall report in writing annually, beginning with the 1937 annual convention, to the Mississippi State Bar covering all of the activities of the Executive Committee for the preceding year and shall embody therein such recommendations as it shall see fit. The Committee shall also report and make recommendations as to the Commissioners as, when the same may be requested.

ARTICLE IV: EXTENT OF AUTHORITY OF THE JUNIOR BAR SECTION

Section 1. The Junior Bar Section may do any and all things which are expressed or implied by Article III, in order to carry out the objectives of the said Junior Bar Section.

Section 2. In no event shall the Junior Bar Section exceed the authority vested in it by the resolutions as contained in Article III except upon the authorization, amendment or extension of the aforesaid resolutions by the Mississippi State Bar in regular convention assembled.

ARTICLE V: COMMITTEES

Section 1. There shall be the following standing committees:

1. Public Relations and Information.
2. Unauthorized Practice of Law.
3. Code Study.
4. Legislative.
5. Convention.

Section 2. Standing committees may be added or deleted by the Executive Committee upon the recommendation of the Junior Bar President.

Section 3. All standing committees shall have a membership of at least five members. Each standing committee shall have a Chairman and Secretary and minutes shall be kept of its meetings and proceedings.

Section 4. In order to assure a continuity of information and experience among the personnel of the committees, it shall be the duty of the President of the Junior Bar Section to reappoint to the standing committees for the succeeding term at least two members who have served on the committee during the immediately preceding term.

Section 5. Every standing committee chairman shall file with the Secretary of the Mississippi State Bar a list of all the members of the committee and copy of the proceedings of all committee meetings. Any other committee may be required to comply with this Section when requested to do so by the President.

Section 6. Every standing committee chairman shall make a written report to the Junior Bar Section at its annual convention, and said written report shall be entered on the minutes of the Junior Bar Section and a copy of said written report shall be filed with the Secretary of the Mississippi State Bar. Any other committee chairman may be required to comply with this Section when directed to do sc by the President.

Section 7. All appointments to the standing committees shall be for a term of one year or until the annual convention next after the appointment of such

committee. All other committee appointments shall be for a term designated by the President.

Section 8. In addition to the standing committees, the President may create and appoint such additional special committees which he may deem necessary and as authorized by Article III.

Section 9. It shall be the duty of the President to make all committee appointments to the standing committees within sixty days after the annual convention of the Mississippi State Bar. All other committee appointments shall be made by the President whenever needed pursuant to Sections 2 and 8 of this Article.

ARTICLE VI: ELECTIONS OF OFFICERS

Section 1. The officers of the Junior Bar Section shall consist of those enumerated in Article III, Section 1. However, the President shall have the authority to appoint a Secretary at the annual convention for the purpose of assisting the Secretary of the Mississippi State Bar in keeping the minutes of the meeting of the Junior Bar Section. In the event the Chairman appoints such Secretary, the duties of said Secretary shall terminate and cease upon the adjournment of the annual convention.

Section 2. The officers shall be elected for a term of one year or until their successors have been elected. The officers shall be elected on the first day of the annual convention of the Mississippi State Bar.

Section 3. The President of the Junior Bar Section shall not succeed himself in office.

Section 4. The Vice-President of the Junior Bar Section shall automatically succeed to the office of President.

Section 5. At its annual convention the Junior Bar Section shall elect and nominate a member of the Junior Bar Section to be recommended to the Mississippi State Bar for the office of Second Vice President. The outgoing President of the Junior Bar Section shall place (or have placed) the name of such person recommended in nomination before the Mississippi State Bar for the office of Second Vice President.

Section 6. The officers elected must receive a majority of the votes cast of those members present and voting.

Section 7. All elections of officers shall be by secret ballot, except that of President, which shall be automatic.

ARTICLE VII: MISCELLANEOUS PROVISIONS

Section 1. All meetings and proceedings of the Junior Bar Section shall be conducted according to Roberts' Rules of Order.

Section 2. On all questions coming before the Junior Bar Section, when duly convened, which are properly to be determined by vote of the Junior Bar Section and which are not otherwise provided for in these By-Laws, a majority of those members present and voting shall prevail.

Sectin 3. No members shall be entitled to vote or to enjoy any of the other privileges or benefits of the Junior Bar Section unless he has paid all dues required or assessed by the Mississippi State Bar.

REPORT OF LAWYER PLACEMENT COMMITTEE

The Lawyer Placement Committee of the Junior Bar Section of the Mississippi State Bar hereby respectfully submits its report.

On the basis of manifest interest in the subject, it appears that there is probable need for a local lawyer placement service within the State of Mississippi. The service should help to achieve maximum utilization of the talents of the members of the State Bar and in so doing should aid corporations, firms and individual practitioners requiring the assistance of lawyers by:

a. Giving them a wider selection by making known those lawyers who might be available.
b. Giving them an opportunity to discuss their requirements with lawyers whose availability might never be suspected until they had made another commitment.
c. Giving them an opportunity to interview selected persons without general notoriety, which could result in unwelcome applications.

It should also serve other members of the Bar, particularly in their earlier years of practice by:

a. Giving them an opportunity to seek a different situation without publicity.
b. Giving them an opportunity to seek a different location, a different type of practice or perhaps greater opportunity.
c. Giving them an opportunity to restrict knowledge of their interest in making a change to corporations, firms or individual lawyers with whom there is a probability of mutual interest.

The need for such a service appears to be found primarily, on the one hand, among prospective employers needing assistance from lawyers who have attained their initial experience. Frequently such employers hesitate to contact lawyers without probable cause for thinking the prospect would be interested. This hesitancy could involve the apprehension of simple embarrassment in finding no interest on the part of the prospect or a reluctance to jeopardize relations with the prospect's present firm or employer.

On the other hand, many attorneys may be reasonably satisfied with their present practice or situation and are not sufficiently apprised of other opportunity to make inquiry or risk losing their present situation.

As a result, opportunities may be frequently lost that would be mutually helpful to both prospective employers and the lawyers they need.

The Committee would like to give special credit to the fine work the University of Mississippi School of Law is doing in the field by publishing an annual brochure of photographs and biographical sketches of its graduates and prospective graduates for the year. As valuable as this service is, it is confined to recent graduates of that institution and does not reach the needs of graduates of other law schools, nor does it furnish any assistance for those requiring the services of more experienced lawyers.

The Committee would respectfully suggest that its successor give further study to the problem and that consideration be given to a plan which would include:

1. A designated person or agency to serve as a clearing house, the person or agency to be Bar-related but involving neither a prospective employer or employee.
2. A set of standard inquiries or application forms affording a means whereby users of the service could indicate their respective interests and requirements and designate the scope of confidence to be attached to their inquiries.
3. A cross-matching by the service of interests and requirements indicated by the inquiries, so that prospective employers and lawyers having a probable mutual interest could each be advised of the interest of the other.

4. After referral of information, it would be up to the prospective employers and interested lawyers to make their own contacts.
5. A modest fee to be paid by both prospective employers and interested lawyers to defray any administrative expense of the plan."

Above all, it is recommended that any such plan should be simple in operation and so conducted that there could be no suggestion of favoritism or possibility of breach of confidences.

REPORT OF THE COMMITTEE OF THE EIGHTEENTH ANNUAL MISSISSIPPI LAW INSTITUTE

The Eighteenth Annual Mississippi Law Institute was presented at the Heidelberg Hotel in Jackson, Mississippi, on December 6th and 7th, 1963. The subject treated was "Probate Law and Practice," a field not previously explored by the Institute. Approximately 200 attorneys were in attendance and a wonderful and beneficial time was had by all.

Following the example of the Seventeenth Institute, the lectures of the several speakers have been published in book form, with beautiful matching covers. Copies may be had from Bobbs-Merrill Company, Inc. at $10.00 each.

This is intended to be a continuing project of the Institute and, since the Institute is keyed to Mississippi Law and Practice, these matching volumes will not only make an attractive set, but they will provide a valuable and practical reference service to practicing attorneys. Particularly is this true of this year's subject which deals with problems and matters not previously published.

The Institute was privileged to have the following contributors: Honorable Leslie Darden, Will Drafting—Requisites and Provisions Affecting Administration of Estates; Honorable Alan N. Polasky, Will Drafting—Depositive Provisions with Tax Aspects; Honorable Erskine Wells, Will Drafting—Depositive Provisions with Tax Aspects; Honorable George William Haynes, The Commencement of Estate Proceedings; Honorable Parham H. Williams, Jr., Administering Estates; Judge William Neville, Closing Estates; and Judge Robert G. Gillespie, Family Lawsuits. Honorable Clayton Rand, Editor, Publisher and Attorney, delivered a provocative and stimulating banquet address.

The Institute again was able to finance its program and proceedings from its own revenues without grant or subsidy from the Law School or Bar Association.

Mr. James Leon Young has been named Chairman of the 19th Annual Mississippi Law Institute and his committee is already planning another fine program for presentation in December, 1964.

REPORT ON THE 1964 MISSISSIPPI TRAFFIC COURT CONFERENCE

The Mississippi Traffic Court Conference was held in Vicksburg, Mississippi, on April 23, 24, and 25, 1964. The Conference was jointly sponsored by the Junior Bar Section of the Mississippi State Bar and the Warren County Bar Association in cooperation with the Traffic Court Program, American Bar Association and the Traffic Institute of Northwestern University.

The content of the program was arrived at after advice from the American Bar Association and Northwestern and advice from Judge Mildred Norris and the Hon. Owen Palmer of the Traffic Court Committee of the Mississippi State Bar. The content was as broad as possible under the circumstances and was designed to be attractive to those members of the Bar whose practice did not include extensive work in Traffic Court, but did include personal injury work. In addition to the program during the day, a social hour was held on Thursday evening, and a social hour and banquet was held in the second night. The speaker at the banquet Friday evening was the Hon. John Fox, Acting Dean of the Ole Miss Law School.

Because of the reputation for very small attendance gained by conferences of this sort in the past, it was decided that the mailing list should be extensive, and publicity increased with the hope of an increase in attendance. A brochure was mailed to every member of the Mississippi State Bar with the cooperation of the State Bar Headquarters. In addition to this, copies of the brochure together with a letter from Governor Johnson, encouraging attendance, was sent to 100 Mayors and all the Sheriffs in the State. We also received mail-out support from the Mississippi Economic Council. This large mail-out of some 2400 brochures greatly increased the cost of this conference, since both printing and postage was tripled.

The registration fee was set at $10.00 per person, including the two social hours and the banquet referred to above. The fee was some $2.00 per person lower than the last conference of this length, because it was hoped that the low fee would be an added inducement to people to attend the three-day conference. Additional financial assistance was received from donations from F. W. Williams, State Agency for U. S. F. & G., Mississippi Municipal Association, Mississippi Safety Council, and Southern Bell Telephone Company. Their total contributions were $450.00.

The attendance at the conference was rather small in comparison with the expenditure of time and money involved; but the total number of 45 people represented an improvement on previous conferences from the standpoint of State-wide coverage. In the last three-day conference held on the Mississippi Gulf Coast the entire attendance was from the Gulf Coast cities, with an exception of two or three persons from Jackson. The attendance at this conference encompassed persons from the coast, from as far east as Meridian, and as far north as Starkville. The most disheartening aspect of the conference was the small percentage of persons in attendance for whom the conference is truly designed. A conference such as this should reach, primarily, the City Judges, the City Prosecutors, Mayors and Justices of the Peace. Unfortunately, no earlier conference has been able to do this, and we were no exception. In spite of these drawbacks, the conference was apparently a success and did fulfill a need to a limited degree. Neither the time nor the money herein was wasted, because there will be a high return on the investment in the form of better court administration in widely scattered areas of the State. Perhaps from these areas the ideas will spread.

In conclusion, the following recommendations are made:

(1) No more three-day conferences be held for quite some time because there is not sufficient interest or enthusiasm in the State at this time to expect that an attorney, a Justice of the Peace, or a City Judge will take off three days from his practice to devote to this subject. Further, because the material covered in a three-day conference is so basic that it need not be covered again for several years.

(2) That all efforts in the field of Traffic Law by both the Junior Bar and the Traffic Court Committee of the State Bar be directed primarily to those sources that need the knowledge most, i.e., Justices of the Peace, City Judges, and Mayors.

(3) That the conferences, if any, to be held in the foreseeable future, not be a Traffic Court Conference as such, and not be restricted to legal procedure and problems. That future work in this area for the immediate future be done from the standpoint of a lawyer-layman conference of the type that is becoming increasingly popular throughout the nation. The ABA is doing work in this area as well as in Traffic Court Conferences; so assistance could be obtained in the formulation of a lawyer-layman conference. This would increase attendance and reach a larger number and more diverse group of people.

(4) That future conferences be limited to one day and be held in Jackson.

(5) That no more multi-day conferences be held at least until after the municipal elections have been held throughout the State.

REPORT OF THE YOUNG LAWYERS' SEMINAR COMMITTEE

The Sixth Annual Young Lawyers' Seminar was held at the Student Center of Millsaps College on August 28, 29 and 30, 1963. This Seminar, sponsored by the Junior Bar Section of the Mississippi State Bar, is an attempt to help the recent admittee bridge the gap between the theory learned in law school and the practical aspects of the practice of law.

The Seminar was open to those students who were in their last semester at the University, those persons who were recently admitted to the Mississippi State Bar, and to those recently passing the Bar examinations. For the first time we also invited attorneys who have been practicing not over five years, on a first-come, first-served basis, but there was little response from attorneys in this group.

Each prospective participant received a personal letter of invitation, with an explanation of the purposes and function of the Seminar. In addition, we have had a member of the University faculty on the committee who has been very helpful in stimulating interest among the third-year law students. Newspaper publicity was also given on a statewide basis.

The subjects covered, together with instructors, are as follows:

ACCOUNTS COLLECTION: R. H. Thompson (Jackson)

MECHANICS OF THE COURTS: Curtis E. Coker (Daniel, Coker & Horton, Jackson)

WILLS AND ESTATES: Francis B. Stevens (Butler, Snow, O'Mara, Stevens and Cannada, Jackson)

ABSTRACTS AND TITLES: Mississippi Valley Title Insurance Company, (Jackson)

DEFENSE OF CRIMINAL ACTIONS: Jesse Boyce Holleman (Wiggins)

NEGLIGENCE ACTIONS: William H. Barbour (Henry, Barbour and Decell, Yazoo City)

DOMESTIC RELATIONS: Orma R. Smith (Corinth)

WORKMEN'S COMPENSATION: Vardaman S. Dunn (Cox, Dunn and Clark, Jackson)

Mr. R. H. Thompson has suggested that the topic "Accounts Collection" be changed to "Commercial Law," in view of the contents of this particular portion of the program being more extensive than delinquent accounts. Mr. J. E. Kemp, Executive Secretary of the Mississippi Workmen's Compensation Commission, assisted Mr. Vardaman S. Dunn in the presentation of the Workmen's Compensation program by explaining the function of the Compensation Commission and the various forms utilized by the Commission in processing claims.

This year the Deposit Guaranty Bank and Trust Company, Jackson, Mississippi, sponsored a complimentary buffet supper for those in attendance at the Seminar. A social hour preceding the banquet was given by Mid-South Title Company. Officers of the Trust Department of the Bank, as well as an officer of Mid-South Title Company, were present at this social function. In addition, First Federal Savings & Loan Association, of Jackson, provided a "coffee bar" during the entire Seminar. The contribution of these three organizations added greatly to the over-all program.

APPENDIX B

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Edward J. Bogen
Weinberg Bldg.
Marvin Burchfield
1137 Lourdes St.
Roy D. Campbell
Box 895
Frank Carlton
P. O. Box 442
George L. Cottingham, Jr.
P. O. Box 40
Ralph D. Davison
Box 918
Fountain D. Dawson
P. O. Box 1151
Anse Dees
P. O. Box 168
Fred C. DeLong, Jr.
P. O. Box 895
W. S. Dickson
Suite 214, Woolworth
Bldg.
Howard Dyer, Jr.
303-04 Weinberg Bldg.
Howard Dyer, III
303-04 Weinberg Bldg.
Holland O. Felts
P. O. Box 1098
Jerome S. Hafter
Box 918
Emmet Harty
205-08 Weinberg Bldg.
W. C. Keady
Box 895
William C. Keady, Jr.
P. O. Box 895
Ernest Kellner, Jr.
Weinberg Bldg.
Raymond V. Kimble, Jr.
205-08 Weinberg Bldg.
J. A. Lake, Jr.
Box 918
Robert Hart Lake, Jr.
124 S. Poplar St.
Robert T. Love
Box 1354
Phillip Mansour
Woolworth Bldg.
Burrell O. McGee
Box 918
W. M. McGough
Weinberg Bldg.
W. L. McIlwain
P. O. Box 558
Horace L. Merideth, Jr.
P. O. Drawer 99
H. A. Miller
Box 1334
Julian David Orlansky
Box 1334
S. Ira Pittman
405-10 Weinberg Bldg.
Judge Zelma W. Price
Box 766
Tony P. Provenza
P. O. Box 357
Eugene J. Raphael
Woolworth Bldg.
James Robertshaw
P. O. Box 99
Geo. Ramsey Russell
Weinberg Bldg.
Laurance J. Sievers
P. O. Box 506
George H. Slade
P. O. Box 1214
Earl Solomon
Weinberg Bldg.
Earl S. Solomon, Jr.
P. O. Box 453
E. B. Taylor
Box 528
Judge S. B. Thomas
Chancellor
William Thomas, Jr.
948 Arnold Ave.
Charles S. Tindall
Box 918
Charles W. Wade
200 Leyser Bldg.
John C. Webb
P. O. Box 676
Burwell B. Wilkes
Suite 411, Weinberg
Bldg.
Joseph E. Wroten
Box 1334
Douglas C. Wynn
Box 918

GREENWOOD

Edward J. Antoon
Box 417
A. H. Bell
Drawer 657
Norman C. Brewer
Box 411
Charles Milton Deaton
Box 411
Gray Evans
Box 411
George A. Everett
P. O. Box 593
John J. Fraiser, Jr.
Whittington Building
Arnold Frederick Gwin
Aven Bldg.
Willie J. Heckler
115 Howard Street
James E. Higginbotham, II
P. O. Box 941
Arthur Jordan
O. L. Kimbrough
Box 516
Hardy Lott
Aven Bldg.
R. Cunliffe McBee
Drawer 657
George Hite McLean
Box 516
Pearl McLellan
Box 54
Gerald J. Montgomery
300 Lamar St.
W. H. Montjoy
Box 906
Yerger Morehead
Whittington Bldg.
Frank K. Odom
P. O. Box 674
H. Talbot Odom
Box 674
Porter W. Peteet
Whittington Bldg.
James M. Pierce
P. O. Box 263
Bobby W. Pittman
City Hall
James C. Pittman, Jr.
Box 674
Judge Charles Pollard
P. O. Box 393
J. Stanny Sanders
P. O. Box 725
Gordon L. Smith
804 Bell Ave.

Richard L. Smith
Box 246
Seth Wheatley, Jr.
Box 389
W. M. Whittington, Jr.
P. O. Box 941
Fred Witty
P. O. Box 912

GRENADA

A. M. Carothers
Grenada Bank Bldg.
Jim McRae Criss
35 First Street
Robert Randolph Criss
35 First Street
Bradford J. Dye
Box 917
Bradford J. Dye, Jr.
Box 917
William H. Fedric
Grenada Bank Bldg.
Jay Gore, Jr.
Box 901
John T. Keeton
P. O. Box 602
Lucille T. Latta
P. O. Box 922
William A. Lomax
Evans Bldg.
Mitchell M. Lundy
11 Evans Bldg.
Judge Marshall Perry
Evans Building
Leon E. Provine
Box 99
William O. Semmes
Box 567
Bryant Jerome Shaw
1176 South Mound Street
Lida B. Shaw
1176 South Mound Street

GULFPORT

Bidwell Adam
1607 24th Ave.
E. J. Adam, Jr.
300 Hewes Bldg.
Robert B. Adam
1607 24th Ave.
Frank W. Alexander
Box 88
George W. Allen
P. O. Box 542
Charles Thomas Anderson
1430 Second Street
Jo Drake Arrington
410 Hewes Bldg.
Harold R. Barber, Jr.
Box 1023
Thomas D. Berry, Jr.
1319 24th Ave.
E. D. Bostrom
P. O. Box 2223
Rae Bryant
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Judge Robert R. Buntin
Chancellor, 8th District
Everett E. Cook
Box 135
Bruce G. Cornell
3rd Floor, Hewes Bldg.
David Cottrell, Jr.
P. O. Box 225
George B. Cousins, Jr.
P. O. Box 2347,
Evergreen Sta.
William F. Dukes
123 Bayou Circle
James S. Eaton
P. O. Box 225
G. E. Estes, Jr.
Box 88
William Estopinal
Medical Building
John A. Evans
Suite 106, Anderson Bldg.
Jason H. Floyd
P. O. Box 1107
E. J. Ford, Jr.
201 Hatten Bldg.
Charles R. Galloway
P. O. Box 225
John M. Gardner
1425 24th Ave.
D. M. Graham, Jr.
203 Hardy Bldg.
D. M. Graham
203 Hardy Bldg.
Richard B. Graves
P. O. Box 138
P. D. Greaves
Suite 308, Gulf Nat'l
Bk. Bldg.
Zula Kate Harris
P. O. Box 225
T. J. Buchanan Heiss
1510 19th Avenue
Gaston H. Hewes
Hewes Bldg.
Judge William G. Hewes
Chancellor
P. O. Box 454
Viola J. Hilbert
Hewes Bldg.
Forrest E. Holder
22 Poplar Circle
Clyde O. Hurlbert
P. O. Box 902
W. Roderick Johnson
211 Gulf South Bldg.
Oscar B. Ladner
P. O. Box 727
Eaton A. Lang, Jr.
P. O. Box 225
Edward M. Lindsey
Box 524
English Lindsey
Hewes Bldg.
Ewart G. Lindsey
H. Lee Lindsey
Room 508, Hewes Bldg.
William E. Logan
Hatten Building
Judge Luther W. Maples
26th Avenue
Ernest G. Martin, Jr.
P. O. Box 985
R. B. Meadows
Hewes Bldg.
Judge Sidney C. Mize
Federal Court
Webb M. Mize
310 Gulf Nat'l Bank Bldg.
John S. Morris
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George E. Morse
P. O. Box 265
Nancy Wood Morse
P. O. Box 265
Stanford E. Morse, Jr.
P. O. Box 265
Sherman L. Muths, Jr.
P. O. Box 127
Albert Lionel Necaise
303 Hatten Building
Paul M. Newton
2414 Fourteenth Street
H. G. O'Conor
4512 Jefferson Ave.
William R. Owings
Box 711
Owen T. Palmer, Jr.
P. O. Box 717
Robert D. Portwood
P. O. Box 134
Clayton Rand
The Dixie Press
Thomas N. Roberts, Jr.
P. O. Box 181
William Mac Rouse
940 Second Street
Joseph C. Seaman, Jr.
No. 11 51st Street
Donald O. Simmons
Box 575
Upton Sisson
1913 Fifteenth Street
George R. Smith
P. O. Box 177
George R. Smith, Jr.
P. O. Box 177
Herman W. Smith, Jr.
1913 15th Street
Herbert J. Stelly
P. O. Box 181
Thomas L. Stennis, II
c/o Judge Sidney C. Mize
Federal Court
William L. Stewart
P. O. Box 717
Ben H. Stone
P. O. Box 225
Thomas B. Sumrall
Hatten Bldg.
Charles T. Sykes, Jr.
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Building

Robert L. Taylor
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Hollis C. Thompson, Jr.
Box 580
R. W. Thompson, Jr.
310 Gulf Nat'l Bank Bldg.
McRae Turner, Jr.
Miss. Power Co.
Fred Haden Walker
2817 25th Ave.
Judge Harry G. Walker
County Court, Harrison County
Box 2251, Evergreen Sta.
Knox W. Walker
408 Hewes Building
Douglas Knox White
P. O. Box 985
Neil W. White
P. O. Box 985
Neil Ware White, Jr.
Abstract Bldg.
W. H. White
P. O. Box 144
Marguerite L. Williams
1805 19th Ave.
Richard L. Yarbrough
P. O. Box 138
Ralph D. Young
P. O. Box 181

HATTIESBURG

Lawrence Arrington
P. O. Box 22
Robert E. Arrington
P. O. Box 22
Bruce C. Aultman
P. O. Box 750
Dorrance Aultman
P. O. Box 750
B. H. Baker
Box 801
Stone D. Barefield
611 Carter Bldg.
Carl E. Berry, Jr.
201-202 Michael Building
J. Lee Bilberry
Box 1390
M. D. Brett
Citizens Bank
Irvin H. Buchalter
P. O. Box 506
Frank Wilson Buckley
1011 Pitts Street
J. M. Byrd
P. O. Box 1725
Robert L. Calhoun
Box 461
Lester Clark
302 First Federal Bldg.
Dudley W. Conner
Conner Bldg.
Harold B. Cubley
Box 969
Edward J. Currie
P. O. Box 29
Edward J. Currie, Jr.
P. O. Box 29
George G. Currie
Box 626
George W. Currie
Box 626
George C. Curry
P. O. Box 1709
Daniel W. Dabbs
P. O. Box 468
T. W. Davis, Jr.
P. O. Box 529
James K. Dukes
P. O. Box 822
James Finch
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Drawer 1231
Herbert R. Ginsberg
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Box 1349
Reginald A. Gray, Jr.
201 Carter Bldg.
John S. Grove
Box 1024
Wallace R. Gunn
P. O. Box 1174
Judge Stanton A. Hall
Circuit Court
P. O. Box 135
Judge William Haralson
Box 132
F. C. Hathorn, Jr.
Box 865
Rowland W. Heidelberg, Jr.
401 Ross Bldg., Box 1070
Robert E. Hill
P. O. Box 62
Paul H. Holmes
P. O. Box 822
William J. Huff
200 N. 38th Avenue
Rex K. Jones
P. O. Box 125
W. Arlington Jones
Suite 405, Carter Bldg.
William F. Jones
Box 95
Carl W. Kepper
Box 251
Marie P. Kepper
Box 251
Joe R. King
Box 227
Robert Lawrence Lennon
3rd Floor
First Fed. Bldg.
Alvin N. London
P. O. Box 426
James F. McKenzie
401 Ross Bldg.
Frank D. Montague, Jr.
201-04 Carter Bldg.
Alfred Moore
Box 95
C. M. Morgan, Jr.
Box 1333
Forrest M. Morris, Jr.
215 E. Front St.
William V. Murry
204 Conner Bldg.
Mildred W. Norris
P. O. Box 1209
Judge Thomas D. Ott
307 Citizens Bank Bldg.
Howard L. Patterson
Box 808
Claude F. Pittman, Jr.
Box 227
Edwin Lloyd Pittman
P. O. Box 1445
Jack Homer Pittman
Box 227
Homer Pittman
Box 227
Moran M. Pope, Jr.
P. O. Box 750
Jesse D. Puckett, Jr.
P. O. Box 1390
William L. Richmond
119 Front St., Box 1148
Thomas Jack Riley
300 Forrest Street
M. M. Roberts
Box 870
John Hillman Rogers
813 Crestview Dr.
W. L. Shappley
P. O. Box 6
James Simrall, Jr.
P. O. Box 750
E. E. Staton
Box 54
Joseph H. Stevens
Box 1643
C. W. Sullivan
P. O. Box 1568
R. M. Sullivan
P. O. Box 1568
T. Harris Sullivan
Ross Bldg.
Dan Gary Sutherland
401 Ross Bldg., Box 1070
James H. C. Thomas, Jr.
400 South 23rd Ave.
Melvin M. Thomas, Jr.
200 29th Ave.
J. Kearney Travis
Drawer 590
James K. Travis, Jr.
P. O. Box 590
Robert A. Walker
P. O. Box 1568
Jack B. Weldy
Suite 206-10 Carter Bldg.
Darl Jene Whitecotton
P. O. Box 870
Elliott T. Wooton
104 South 20th Ave.
Francis T. Zachary
P. O. Box 24

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S. E. Allen, Jr.
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John T. Armstrong
P. O. Box 429
Mrs. E. R. Arrington
Box 347
R. O. Arrington, Jr.
Box 347
Donald C. Cooley
P. O. Drawer 30
Harris B. Henley
Box 509
W. S. Henley
Box 509
Harry O. Hoffman, Jr.
Bank of Hazlehurst Bldg.
Carroll Kemp
Wilson Bldg.
Julius L. Lotterhos, Jr.
Box 509
Lena C. Zama
P. O. Box 108

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Ross Lee Franks
Boyce Lee Garner
Lee Virden Hamberlin
P. O. Box 715
F. C. Holmes, Jr.
William L. Rone
Joel P. Walker
Edward Lee Whitten
P. O. Box 695
W. E. Wilroy
Box 5
W. E. Wilroy, Jr.
Box 5

HICKORY
W. M. Everett
Box 115
S. E. McGee

HOLLANDALE
W. Scott Thompson
Box 307

HOLLY SPRINGS
Fred M. Belk
Merchants & Farmers
Bank Bldg.
John W. Bryant, Jr.
Merchants & Farmers
Bank Bldg.
Robert P. Crutcher
P. O. Box 377
Wall Doxey, Jr.
Lester G. Fant, Jr.
P. O. Box 66
Sidney L. Hurdle
First State Bank Bldg.
John L. Kennedy
North Side of Square
Herbert S. Phillips, Jr.
353 College St.
L. A. Smith, Jr.
First State Bank Bldg.
Fred E. Swaney
Van Dorn Ave.
Ben Marshall West
P. O. Box 66

HORN LAKE
Bobby Gerald Perry
P. O. Box 121

HOUSTON
H. B. Abernethy
Woodrow Wilson Brand, Jr.
Box 128
Jeff Busby
P. O. Box 123
Thomas B. Davis
432 S. Jackson St.
John P. Fox
P. O. Box 231
Robert G. Gilder
James Simms Gore
562 North Jackson Street
A. E. Hawkins
Box 266
C. H. McCraine, Jr.
P. O. Box 231

INDIANOLA
Richard M. Allen
404 Main Street
A. B. Clark
Box 88
Judge Arthur B. Clark, Jr.
Circuit Court
P. O. Box 88
Edward L. Cook, Jr.
P. O. Box 147
Forrest G. Cooper
Masonic Bldg.
Frank O. Crosthwait, Jr.
Masonic Building
Howard Q. Davis
P. O. Box 88
Aaron M. Edwards
236 Sunflower Ave.
Hugh Lumpkin
P. O. Box 666
Gordon L. Lyon
Masonic Bldg.
J. H. Price
David M. Quinn, Jr.
Box 172
G. P. Ritchey
128 Main St.
Oscar B. Townsend
P. O. Box 88

ITTA BENA
Cleveland Davis
Box 98
Perry W. Morton
Box 82

IUKA
J. O. Clark
Iuka Guaranty Bank Bldg.
James Barry Finch
Box 335
Cecil Lamar Sumners

JACKSON, MISS.
Annie Lou Abel
1409 St. Francis
Lee B. Agnew
418 Yazoo St.
John E. Aldridge
Box 1699
Chalmers W. Alexander
Box 291
James A. Alexander, Jr.
P. O. Box 977
Julian P. Alexander, Jr.
Box 1367
Paul Alexander
P. O. Box 1353
William A. Allain
P. O. Box 220
James E. Allen
P. O. Box 1200
Sam S. Allred
P. O. Box 651
Alexander A. Alston, Jr.
P. O. Box 158
Lester Alvis, Jr.
3955 Berkley Dr.
Daniel Thomas Anderson
P. O. Box 263
B. Galloway Austin
518 E. Pascagoula St.
Roy G. Ayles
P. O. Box 97
William A. Bacon
Box 15
Hugh L. Bailey
640 Milner Building
Judge Charles T. Barber
P. O. Box 1734
Frank D. Barber
Special Asst. to the
Governor
New Capitol Building
Harold J. Barkley, Jr.
5134 Parkway Drive
Henry E. Barksdale
P. O. Box 2337
James Arden Barnett
P. O. Box 1288
Robert G. Barnett
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Ross R. Barnett
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Ross R. Barnett, Jr.
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John Edward Bat
575 Woodward Avenue
Stephen L. Beach, Jr.
P. O. Box 663
Loyd Lamar Beacham, Jr.
822 Plaza Bldg.
Wirt Adams Beard
133 Keener Avenue
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690 First Nat'l Bank Bldg.
William H. Bennett, Jr.
Box 56
Walter Berry
Box 1199
Robert A. Biggs, Jr.
P. O. Box 1370
Richard A. Billups, Jr.
P. O. Box 1056
Alvin Binder
P. O. Box 25
Samuel E. Birdsong, Jr.
4047 Pine Hill Drive
Melvin B. Bishop
Box 1084
Walter R. Bivins
235 Cooper Road
D. Carl Black
4810 Windemere Terrace
William P. Black
1656 Winchester Street
Tom L. Blissard
King Edward Hotel
Wayne Bolton
5538 North State St.
Grover L. Boone
4660 Meadowridge Drive
James A. Boone
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200 S. President
Barnett Bldg.
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431 Tombigbee,
Court Square S. Bldg.
Hartwell Bowling
Box 78
Richard C. Bradley
406 Rollingwood Drive
Judge Tom P. Brady
Associate Justice,
Supreme Court
New Capitol
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Box 8222
Battlefield Station
Jack W. Brand
Box 158
S. M. Brand
Box 8222
Battlefield Station
Dan E. Breland
P. O. Box 765
Charles Alexander Brewer
306 Barnett Bldg.
Billy G. Bridges
P. O. Box 5767
Kenneth M. Britt
1275 Petroleum Bldg.
Charles L. Brocato
P. O. Box 22
Harmon W. Broom
Box 1275
R. H. Broome
P. O. Box 5915
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R. Jess Brown
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Millard M. Bush
P. O. Box 25
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Wilton V. Byars
1617 Wilhurst St.
Joseph B. Cadwallader
245 Sykes Road
T. Eugene Caldwell
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Edwin T. Calhoun
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Craig Castle
328 First Nat'l Bank Bldg.
Edward L. Cates
P. O. Box 2216
Paul Chambers
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William M. Champion
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Reynolds Cheney
Box 1666
James K. Child, Jr.
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W. M. Childress
P. O. Box 12
Bernard W. N. Chill
P. O. Box 1482
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Box 427
Richard D. Chotard, Jr.
639 North Congress St.
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P. O. Box 1046
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107 Electric Bldg.
Hollis M. Clark
513½ E. Capitol Street
Thurman L. Clark
4143 Carol Drive
William W. Clark
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Neal Clement
1411-13 Standard
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1105 Garden Park Drive
Percy L. Clifton
501 Medical Building
John W. Coalter
325 Sun Drive
J. W. Cocke
1339 Dep. Gty.
Bank Bldg.
Dr. John V. Cockrell
1816 St. Ann Street
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P. O. Box 427
Curtis E. Coker
Box 1084
William F. Coleman
431 Tombigbee
Aline J. Collum
416 Plaza Bldg.
James O. Conner
821 Madison Street
A. S. Coody
776 North West St.
Henry D. Cook
1216 Raymond Road
Robert F. Cooper
Box 1450
John R. Countiss, III
P. O. Box 241
H. A. Courtney
1231-33 Dep. Gty.
Bank Bldg.
Bobby Louis Covington
P. O. Drawer 2428
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Judge William Harold Cox
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P. O. Drawer 1250
Rufus Creekmore
822-25 Plaza Bldg.
Wade H. Creekmore
1000 Bankers Trust
Plaza Bldg.
Thomas R. Crews
P. O. Box 977
Alfred N. Crisler
431 Tombigbee
Court Square
Bert Crisler
813 Dep. Guar. Bk. Bldg.
Charles W. Crisler, Jr.
431 Tombigbee,
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Thomas W. Crockett, Jr.
Box 961
Earl R. Cruthirds
Box 1947
E. Hugh Cunningham, Jr.
P. O. Box 1288
Arthur Dale Currie
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Joe H. Daniel
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P. O. Box 158
Col. James L. Davis
Federal Building
Joe Sanford Deaton
4243 Meadowlane Dr.
Albert Dickens, Jr.
P. O. Box 3114
R. R. Dinsmore
4096 Redwing Ave.
J. Hubern Dodd
212 Barnett Bldg.
Richard W. Dortch
P. O. Box 119
James K. Dossett
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Bank Bldg.
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P. O. Box 650
Al D. Eatmon
P. O. Box 845
Barney E. Eaton, III
P. O. Box 942
Grady Jyles Eaves
Plaza Bldg.
John Arthur Eaves
Plaza Building
Lynel C. Echols
1231-33 Dep. Gty.
Bank Bldg.
Richard Mack Edmonson
P. O. Box 326
Allan T. Edwards
707 Plaza Bldg.
E. Ray Edwards
Box 427
Joseph B. Elliott
202 Medical Bldg.
Lura Clark Ethridge
P. O. Box 119
Judge W. N. Ethridge, Jr.
Asso. Justice
Supreme Court
New Capitol
Clyde V. Eubanks
P. O. Box 10087
William D. Evans
202½ W. Capitol
Robert D. Everitt
P. O. Box 651
Jack H. Ewing
P. O. Box 330
Foster C. Fant, Jr.
330 Cedars of
Lebanon Road
Michael P. Fedorak, Sr.
V.A. Center, Rm. 119-D
Bethel Ferguson
Mississippi Power & Light
F. Charles Flowers
P. O. Box 59
Grey Flowers
Box 2022
Henry G. Flowers
P. O. Box 609
Roger Mayo Flynt, Jr.
690 First Natl Bank Bldg.
W. B. Fontaine
1623 Dep. Guaranty
Bank Bldg.
Aaron L. Ford
609 Plaza Bldg.
Victor J. Ford
200 Petroleum Bldg.
John D. Fournet
P. O. Box 1031
John H. Fox, III
Box 1261
Lawrence J. Franck
P. O. Drawer 1250
J. B. Franklin
P. O. Box 12
Lawrence C. Franklin
Box 444
Kenneth I. Franks
690 First Nat'l Bank Bldg.
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3920 Oaklawn Dr.
Evelyn Gandy
727 Arlington Street
Sims Marion Gaston, Jr.
715 Neering Trail
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Box 158
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1203 Dep. Gty.
Bank Bldg.
Walter J. Gex, III
P. O. Box 1172
Don A. Gill
P. O. Box 4271
Judge R. G. Gillespie
Asso. Justice
Supreme Court
New Capitol
Robert G. Gillespie, Jr.
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William F. Goodman
P. O. Box 650
Charles M. Gordon
737 Dep. Gty. Bank Bldg.
Weaver E. Gore, Jr.
Box 186
Robert S. Graham
Box 1841
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Thomas D. Bourdeaux
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304 Lamar Bldg.
A. S. Bozeman, Jr.
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Maxie Gene Brown
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Overton W. Cameron
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Tate Thigpen
113 East Canal St.
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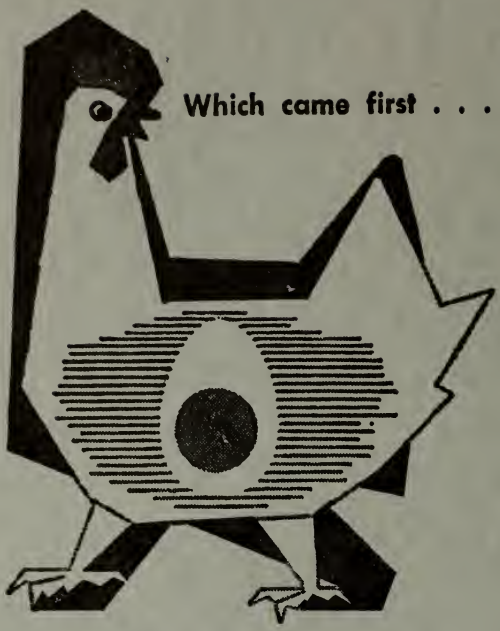

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